

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DRFP LLC, D/B/A SKYE)	
VENTURES,)	
)	
PLAINTIFF,)	CASE NO. 2:04-cv-0793
)	
vs.)	
)	
REPUBLICA BOLIVARIANA)	
DE VENEZUELA, ET AL.,)	
)	
DEFENDANTS.)	
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VOLUME 4
TRANSCRIPT OF BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDMUND A. SARGUS, JR.
THURSDAY, FEBRUARY 4, 2016; 9:20 A.M.
COLUMBUS, OHIO

FOR THE PLAINTIFF:
Cooper & Elliott, LLC
By: Charles H. Cooper, Jr., Esq.
Rex H. Elliott, Esq.
Charles B. Cooper, Esq.
Adam P. Richards, Esq.
2175 Riverside Drive
Columbus, Ohio 43221

Law Offices of John C. Camillus
By: John C. Camillus, Esq.
P.O. Box 14140
Columbus, Ohio 43214

FOR THE DEFENDANTS:

Foley Hoag, LLP
By: Andrew Z. Schwartz, Esq.
Matthew L. Baltay, Esq.
Madeleine K. Rodriguez, Esq.
Richard G. Baldwin, Esq.
Thomas R. Ayres, Esq.
Christopher E. Hart, Esq.
155 Seaport Boulevard
Boston, Massachusetts 02210

Calfee, Halter & Griswold
By: Albert J. Lucas, Esq.
1200 Huntington Center
41 South High Street
Columbus, Ohio 43215

FOR INTERESTED PARTY MIGUEL JACIR:

Graydon Head & Ritchey
By: John B. Pinney, Esq.
511 Walnut Street, Suite 1900
Cincinnati, Ohio 45202

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LAURA SAMUELS, RPR
FEDERAL OFFICIAL COURT REPORTER
85 MARCONI BOULEVARD, ROOM 121
COLUMBUS, OHIO 43215
TELEPHONE NUMBER 614-719-3245

Thursday Morning Session

February 4, 2016

- - -

THE COURT: Counsel, good morning to all of you. We had a little bit of an issue that's been resolved with some court reporting matters. We're ready to begin.

Mr. Schwartz, you may continue with the cross-examination of Mr. Richards.

MR. SCHWARTZ: Thank you very much, Your Honor.

- - -

DAVID RICHARDS

resuming the stand for further cross-examination, having been previously duly sworn, continued his testimony as follows:

CROSS-EXAMINATION (Cont'd.)

BY MR. SCHWARTZ:

Q. Good morning, Mr. Richards.

A. Good morning.

Q. Preliminary question. Since the time you left the witness stand yesterday, have you discussed your testimony with anyone?

A. You mean the substance of my testimony or whether I was doing okay or not?

Q. Any aspect of it, sir.

A. I think -- no, not really.

Q. You'll recall that we spent some time at the beginning

1 of your cross-examination yesterday talking about the waterfall
2 that was in effect the day this lawsuit was filed. Do you
3 remember that?

4 A. I don't recall that we -- we talked about the evolution
5 of the waterfall but I don't recall that we talked about what
6 it was specifically the day the lawsuit was filed.

7 Q. You don't recall we spent time looking at Defendant's
8 Exhibits 521 and 581 and there was a \$39 million non-recourse
9 promissory note in 521 and then a different form of
10 non-recourse note in 581 which had you only getting
11 \$10 million?

12 THE COURT: I don't think we need to go over all this.
13 I remember what we went over.

14 MR. SCHWARTZ: I just want to make sure the witness
15 does.

16 THE COURT: Well, I'm the one that's going to be
17 deciding the case. Let's go forward, if we can.

18 MR. SCHWARTZ: Okay.

19 BY MR. SCHWARTZ:

20 Q. I've done a little additional homework on the subject,
21 Mr. Richards, and I want to review something with you here. So
22 let me ask that we put before you your deposition transcript
23 from your rule 30(b)(6) deposition on December 23rd of 2014.

24 A. Okay.

25 Q. You have that with you?

1 A. I have the deposition.

2 Q. All right. Let me ask you, please, to turn to page 76
3 of the 30(b)(6) deposition transcript.

4 A. I'm sorry, 76?

5 Q. Yes.

6 A. Okay. Yeah.

7 Q. On line 18 do you see I asked you a question. So when
8 you entered into this transaction, how did you quantify the
9 risk and how did you quantify the reward?

10 Do you see that question?

11 A. Yes.

12 Q. And then you gave a rather lengthy answer that began on
13 the bottom of page 76, continued through the entirety of page
14 77, continued through the entirety of page 78, and concluded on
15 line 2 of page 79, right?

16 A. I see that it's a very long answer for sure. I said a
17 lot of stuff in there.

18 Q. All right. If you feel it's necessary at any point
19 during this exchange, you can look at any or all of that. But
20 I'm going to direct your attention right now to page 78, line
21 8. Are you fixated on that, Mr. Richards?

22 A. Yes.

23 Q. Do you see that on line 8 on page 78 you said, quote,
24 and on the reward side we were going to get a return on our
25 funding. As of the time we filed the lawsuit, I believe our --

1 the waterfall would have put us at, after the attorneys were
2 paid, the next \$10 million.

3 Do you see that?

4 A. You're talking about line 13 there?

5 Q. I'm talking about lines 8 through 12.

6 A. Oh.

7 Q. Have I read those correctly?

8 A. Again -- yeah. I say, I believe our waterfall would
9 have put us at the next 10.

10 Q. Now let's look at lines 13 through 15. Do you see that
11 you testified on December 23rd, 2014, quote, so the potential
12 at that point was that we would have put all of the cash, all
13 of the 15 years of effort, all the risk for just the
14 \$10 million return.

15 Do you see that's what you said on December 23rd, 2014?

16 A. I said that. I think it should be put in context, but I
17 said it.

18 Q. Let me ask you now to look at line 22 on the same page,
19 78. Do you see starting on line 22 you testified, quote, so
20 the deal as structured when we -- it was certain when we filed
21 the litigation is we would receive something short of
22 \$10 million that in return for not only the cash and my time
23 but the commitment to put all the effort into the lawsuit,
24 that's how I looked at it. Continuing on to page 79.

25 Is that what you said December 23rd, 2014?

1 A. This is in respect to the waterfall that we had at the
2 deposition and we were discussing from December that I would be
3 netting \$10 million after paying all of the lawyers, all of the
4 fees, all of the promissory note, all of that thing. So that's
5 my recollection. And I believe if we look -- if you gave me --
6 if we looked at the whole deposition, that's what we were
7 discussing at that time.

8 Q. So you said three times on page 78 continuing on to line
9 2 of page 79 that what you stood to gain the day you filed the
10 lawsuit was \$10 million or less, correct?

11 A. Again, in the context of the December waterfall that I
12 think we were discussing at the time which I said to you was I
13 was paying A, lawyers 30 million, promissory note Gruppo Triad
14 39 million, Jacir, 8 percent. There was a risk. We went over
15 Sitrick, what he would get, what the investigator was getting.
16 Net of that 100 million, 10 million -- about 10 million, more
17 or less, would be left for me. We were saying that that was
18 not a great deal for me and it was also in the context of me
19 telling you in this deposition that my goal from that point
20 forward was to improve the waterfall.

21 Q. Mr. Richards, the lawsuit was filed in August, not
22 December of 2004, correct?

23 A. That's right.

24 Q. These questions or rather these answers specifically
25 addressed the waterfall the day the lawsuit was filed, correct?

1 Three times in one page and two lines of this transcript, isn't
2 that correct?

3 A. If you look at it, you're saying the waterfall contained
4 in Exhibit 12, that's what you're referring to.

5 Q. Mr. Richards?

6 A. In this question, it says it right here. And that's the
7 waterfall we were discussing, the waterfall contained in
8 Exhibit 12.

9 Q. All right. I'm going to have to show you one more page
10 of the transcript. Take a look now at page 80, the next page.
11 And I'm going to direct your attention to my question beginning
12 on page 4, I'm sorry, line 4. Do you see I addressed you with
13 the following question: And let's look at the waterfall that's
14 contained within Exhibit 13 -- that was deposition
15 Exhibit 13 -- that's on page 005874.

16 Do you see that question?

17 A. I'm sorry. I think I might have lost my place here.
18 You were talking about page --

19 Q. Page 80.

20 A. Page 80. All right.

21 Q. Line 4. Are you there?

22 THE COURT: Exhibit 13. What does that correspond to
23 in this case?

24 MR. SCHWARTZ: I'm going to point out in a moment it's
25 Defendant's Exhibit 581, Your Honor.

1 THE COURT: Thank you.

2 THE WITNESS: Okay. You say let's look at, this is a
3 different section and you're saying let's look at Exhibit 11.
4 We were looking at Exhibit 12 before, right?

5 BY MR. SCHWARTZ:

6 Q. Mr. Richards, stick with my questions. Line 4. It's a
7 short question. Quote, and let's look at the waterfall that's
8 contained within Exhibit 13 that's on page 005874.

9 Do you see that was the question?

10 A. Yes.

11 Q. All right.

12 A. I see that's the question.

13 Q. Now, that was a reference to deposition Exhibit 13.

14 A. Right.

15 Q. I'd like you now to look at Defendant's trial
16 Exhibit 581. We looked at it yesterday. We can look at it
17 right now. Is a hard copy available to you?

18 A. No. I don't have one in front of me.

19 Q. D-581.

20 THE COURTROOM DEPUTY: D-581.

21 BY MR. SCHWARTZ:

22 Q. Let's start just by looking at the first page of D-581.

23 A. Okay.

24 THE COURT: Give me just one second to find that, if
25 you would, Mr. Schwartz.

1 MR. SCHWARTZ: We have extra copies, Your Honor.

2 THE COURT: I know you gave it to me.

3 MR. SCHWARTZ: We'll give you another one.

4 THE COURT: It's here somewhere. Just a moment.

5 I've got it.

6 BY MR. SCHWARTZ:

7 Q. All right. Let's look, Mr. Richards, do you have D-581?

8 A. Yes.

9 Q. Let's look at the first page of D-581.

10 A. Okay.

11 Q. Do you see in the lower right-hand corner it was

12 deposition Exhibit 13?

13 A. Yes.

14 Q. And that's the deposition exhibit I was asking you about

15 on lines 4 and 5 on page 80, right?

16 A. That's right. I think I was confused because you
17 switched there from 12 to 13. You'd been asking me a bunch of
18 questions about the waterfall in 13 and so I might have
19 misunderstood -- I misunderstood, I think, looking at this
20 answer.

21 Q. Well let's see what the question and the answer were.

22 On lines 4 and 5 I asked you about Exhibit 13 and then I
23 directed you to page 005874, right?

24 A. You did.

25 Q. All right. Now I'm going to do the same exact thing.

1 Please look at page 005874 within D-581. Let me know when you
2 have that page in front of you.

3 A. I've got it.

4 Q. Okay. Now we're going to proceed to line 7 on page 80
5 of the 30(b)(6) deposition.

6 A. Page what?

7 Q. Same page 80, three lines lower.

8 A. Gotcha.

9 Q. After I said, let's look at the waterfall that's
10 contained within Exhibit 13 that's on page 005874, and you
11 said, yes, I asked another question. Quote, and if you look at
12 that waterfall, is that the one that was in effect when you
13 agreed to purchase 7/12 and 8/12 in late July or early August?

14 Do you see that question?

15 A. Yes. Could I ask you to see Exhibit 12?

16 Q. Not right now.

17 A. Because I say the exact -- you ask me the exact same
18 question about Exhibit 12 that you -- three outlines earlier,
19 as you did about Exhibit 13.

20 THE COURT: We'll have to save that for redirect.

21 You may continue.

22 THE WITNESS: Okay. I'm sorry.

23 BY MR. SCHWARTZ:

24 Q. Now I'm going to repeat the question because I don't
25 want there to be any possible understanding or interruption.

1 So I said, let's look at the waterfall on page 005874. Right?
2 Just like we're doing now.

3 A. Yes.

4 Q. And I asked you on December 23rd, 2014, quote, and if
5 you look at that waterfall, is that the one that was in effect
6 when you agreed to purchase 7/12 and 8/12 in late July or early
7 August?

8 Do you see that?

9 A. Yes, I do.

10 Q. And your answer was, quote, I believe so, yes. Right?

11 A. Yes.

12 Q. Let's move on to another subject. We'll mark D-538.
13 I'll show you D-538. It's previously been marked.

14 THE COURTROOM DEPUTY: D-538.

15 BY MR. SCHWARTZ:

16 Q. Mr. Richards, do you have D-538 with you?

17 A. I do.

18 Q. This document's got a number of parts to it so I'm going
19 to take you through it slowly at the beginning. I'd like you
20 to look at the bates stamp page JACIR01-005.

21 A. Yes.

22 Q. And toward the bottom of that page do you see there's an
23 e-mail from you to Antonio Usuelli, James Pavanelli and Siro
24 Schianchi dated May 5th, 2004?

25 A. So I can't read it on this, but on the screen I can see

1 that it is.

2 Q. And I want you to look at the subject --

3 THE COURT: My copy is unreadable, too. The date on
4 this is?

5 MR. SCHWARTZ: 5 May, 2004. Fairly legible up there
6 on the --

7 THE COURT: All right. I can read it.

8 BY MR. SCHWARTZ:

9 Q. And I want you to look, first of all, at the subject
10 line. And you can see it starts with the words -- the letters
11 capital FW for forwarding, right?

12 A. I don't see -- subject FW, yeah. Okay.

13 Q. So you were forwarding something to Usueli and
14 Pavanelli and Schianchi, right?

15 A. I don't remember that but --

16 Q. Take a look at the bates stamp page that's immediately
17 following 005, it's JACIR01-006. Do you have that page?

18 A. Yes.

19 Q. So here's a letter in Spanish from Miguel Jacir to
20 Pavanelli, right?

21 A. Yes.

22 Q. And when you sent the e-mail that appears on page 01-005
23 you said, this is an extremely serious blow. We need to
24 discuss tomorrow. Right?

25 A. That's what it says.

1 Q. What you were doing when you communicated that to
2 Usuelli, Pavanelli and Schianchi was forwarding this letter
3 from Jacir, right?

4 A. That's what it appears. Again, I don't recall it.

5 Q. All right. Let's now look at a different part of this
6 document. There's a translation that appears on the bates
7 stamp page JACIR01-006?

8 A. 01-006. I have that, yeah.

9 Q. That's a translation of -- actually it's the same bates
10 number and that's the translation of the last page of this
11 exhibit. I'll represent that to you.

12 A. Okay.

13 Q. So here's the English translation of the letter from
14 Jacir to Pavanelli that you forwarded. Why don't you take a
15 moment and look at it.

16 A. I've read it.

17 Q. So basically what was going on in this letter was Jacir
18 was resigning from representing Pavanelli, right?

19 A. Yes.

20 Q. And he said, among other things, he's irrevocably
21 resigning as representative of Triad FFC-S.P.A. because I
22 consider that you have not valued the work I have done for your
23 company, which I have served loyally and honorably without
24 receiving one single cent in fees and which I have invested my
25 own money. Right?

1 A. Yes. You've read the first part of that correctly.

2 Q. And when you got a copy of this resignation letter from
3 Jacir to Pavanelli, you regarded that as an extremely serious
4 blow, right?

5 A. We wanted Jacir to be around. He was a really
6 accomplished guy. It was a blow if he was not part of it. I
7 don't recall saying that, but I would -- don't doubt I would
8 have said it. I valued Jacir's input.

9 Q. There's no doubt he did say it, right?

10 A. Whether he said it and it went away the next day, again,
11 I don't remember this.

12 Q. There's no doubt that you sent this e-mail to Usuelli
13 and Pavanelli and Schianchi, is there? You're not denying
14 that?

15 A. Again, I'm not arguing with you. I'm saying I don't
16 remember it.

17 Q. This is an e-mail sent from drichards@netwalk.com,
18 right? That's what it looks like on page 005?

19 A. That was one of my e-mail addresses at the time for
20 sure.

21 Q. On May 5th, 2004, you were deep in the throes of dealing
22 with Pavanelli and his various acquaintances, right?

23 A. At that point we were -- had made the decision to
24 proceed with the lawsuit, that the Attorney General's decision
25 was final and binding, and I was trying to get a final deal.

1 Q. Taking that into account and that this is an e-mail
2 address you used at the time, it's more probable than not that
3 you sent this e-mail to Usuelli, Pavanelli and Schianchi on
4 May 5th, 2004 as indicated on this exhibit, correct?

5 A. So you're asking me to judge more probable than not. I
6 said I'm not arguing with you about that. That was an e-mail
7 address I used at the time. I just don't remember it.

8 Q. How did you get a copy of this Spanish resignation
9 letter?

10 A. I have no idea.

11 THE COURT: If we could clear up. Remembering the
12 e-mail is one issue. Remembering the subject matter is
13 another. I don't believe we addressed both.

14 BY MR. SCHWARTZ:

15 Q. And you do remember this subject matter of Jacir
16 resigning, right?

17 A. I really don't.

18 Q. Fair enough.

19 A. My guess would be it went away. This is Pavanelli 101
20 where he'd have these blowups and they'd get resolved or
21 sometimes not.

22 Q. So Pavanelli then responded to your e-mail the next day,
23 correct?

24 A. There is an e-mail here from Pavanelli to me, Usuelli
25 and some other e-mail addresses that I really don't recognize.

1 Q. Well, among the other e-mail addresses included in the
2 CC line on Pavanelli's e-mail is cromandelchal@hotmail.com?

3 A. Yes.

4 Q. That's Carlos Roman Delgado's e-mail address, correct?

5 A. Again, I don't know that one way or the other. I don't
6 recall ever seeing this e-mail address for Roman Delgado. I'm
7 not denying it. I just don't know.

8 Q. And Pavanelli, he added his own subject line when he
9 sent his response, right?

10 A. Yeah.

11 Q. He called it bullshit from Jacir and Bonetti, right?

12 A. Yes.

13 Q. Let's see what he had to say under that polite
14 salutation. First of all, in the first paragraph you look at
15 the third line he says, Bonetti had promise to get the payment
16 order from the Ministry of Finance in exchange for a uge amount
17 of notes on or before October 4. Do you see that?

18 THE COURT: One moment. There's an objection.

19 MR. ELLIOTT: Thank you, Your Honor.

20 I think Mr. Richards has indicated he doesn't recall
21 this e-mail. Certainly if he recalls the subject matter,
22 that's a different story.

23 THE COURT: He doesn't have any -- you have no
24 foundation for this. You can ask him about the subject matter
25 and ask him whether he remembers this e-mail. If he doesn't

1 remember anything then we're back to the subject matter only.

2 MR. SCHWARTZ: I'm going to address the subject matter
3 of the e-mail and we'll see where it leads.

4 THE COURT: But right now reading to him a document
5 that he says he hasn't seen.

6 MR. SCHWARTZ: May I be heard a bit further on this?

7 THE COURT: Briefly.

8 MR. SCHWARTZ: We have here an exchange of e-mails at
9 a time when Mr. Richards was actively engaged with the people
10 who are on it from an e-mail address that he acknowledges to be
11 one he used at the time. When you have a witness, as has been
12 the case to some extent in the course of this
13 cross-examination, who looks at e-mails of that nature and
14 says, well, I can't be sure if I got them or not, it was a long
15 time ago --

16 THE COURT: But this is substantive matters right now.
17 First of all, we're talking about whether he had knowledge of
18 this. He says he's never seen it. You can later argue about
19 what he should have known, inferences and so on, but if he
20 hasn't seen it, he can't be crossed with it. Unless you've got
21 some other basis. And I don't hear one at this point.

22 MR. SCHWARTZ: I think it also will present,
23 ultimately, a credibility issue. But I think I can ask him
24 about the subject matter in here and ask him if he remembers
25 it.

1 THE COURT: You can do that.

2 MR. SCHWARTZ: But the only way to lay the groundwork
3 for the question is to indicate what it says, I think.

4 THE COURT: I don't think you can ask him to read it
5 line for line.

6 MR. SCHWARTZ: All right. I'll adjust.

7 BY MR. SCHWARTZ:

8 Q. Do you have a recollection that after you forwarded
9 Jacir's resignation letter to Pavanelli there was some
10 discussion with Pavanelli concerning Bonetti having promised to
11 get a payment order from the Ministry of Finance in exchange
12 for a huge amount of notes on or before October 4th of 2003?

13 A. No.

14 Q. Do you recall any interaction with Pavanelli or any
15 member of his entourage concerning some arrangement under which
16 Bonetti had promised to get a payment order from the Ministry
17 of Finance at any time?

18 A. So I -- the -- his entourage, I don't know what you mean
19 by his statement. It sounds like something I've not said. So
20 I don't know that Pavanelli had an entourage. I don't think he
21 did.

22 So just to clarify my answer to your question, I'm not
23 consenting to your introduction about characterizing Pavanelli
24 and his entourage. So I know he had an attorney and we had an
25 investor, Usuelli.

1 So and to that end, I did not know that. Ultimately I
2 knew there was an agreement between Woodstrite and Gruppo that
3 provided something specific, but I don't recall discussing this
4 matter with Pavanelli.

5 Q. All right. In light of your challenging the premise of
6 the question, let me rephrase it. At any time in or after May
7 of 2004, were you privy to any kind of discussion, whether it
8 was oral or in writing, that involved the issue of Bonetti
9 promising to get to Pavanelli or Gruppo Triad a payment order
10 from the Ministry of Finance?

11 A. Again, we became aware after this or before it, I don't
12 know exactly when, that there was an agreement that Alcalde
13 described between Woodstrite, Bonetti and Manfredi on the one
14 hand, and Gruppo on the other. The way Luis Alcalde
15 characterized it was they were commissioned to use their
16 contacts, their knowledge of the people in Venezuela to get an
17 investigation started.

18 I assume that's what the contract read. I don't know.

19 Q. That was the arrangement under which Manfredi and
20 Bonetti, occasionally known as Woodstrite, were going to get
21 \$250 million in face amount of the purported notes for lobbying
22 the congressmen to cause the investigation to be initiated; is
23 that right?

24 A. I recall that it was 22, 25 percent. So that's -- they
25 had an interest in the success, yes.

1 Q. 25 percent of over a billion, right?

2 A. Of whatever was recovered.

3 Q. But the amount of notes that Pavanelli was seeking to
4 have investigated was over a billion dollars in face amount,
5 right?

6 A. That was the face value of the promissory notes, the
7 zero coupon promissory notes.

8 Q. Rough math, 25 --

9 MR. ELLIOTT: Your Honor, I think we've covered this
10 over and over again.

11 THE COURT: I think with respect to this particular
12 e-mail I'll overrule the objection. You may continue.

13 MR. SCHWARTZ: Can I finish this question?

14 THE COURT: I overruled the question. You may go
15 forward.

16 BY MR. SCHWARTZ:

17 Q. So without prolonging this, 25.11 percent of a billion
18 is, give or take, 250 million, right?

19 A. Yes. Your math is correct.

20 Q. At any time do you recall any time before you obtained
21 the purported notes, let's put it that way, do you recall any
22 interaction with Pavanelli, Manfredi, Bonetti, Usuelli, Carlos
23 Delgado Morean or others concerning the failure to obtain a
24 payment order from the Ministry of Finance?

25 A. Well, I think I've described my only interaction with

1 Manfredi and Bonetti which was in the end of June of 2004. So
2 I would refer you back to that. And we discussed the subject,
3 of course, and that that was also the purpose of -- the primary
4 purpose, I think, of Alcalde's trip to Switzerland to discuss
5 that further with the parties. I was not present there.

6 Q. Let's move a little further along with this document.
7 Another subject here that is introduced in the same paragraph
8 in the May 6, 2004 e-mail is Jacir being about to introduce a
9 claim to the Administrative Court and claiming that to do that,
10 he needed to have possession of the notes.

11 Do you have any recollection of having engaged in any
12 kind of communication, oral, written or otherwise, with anyone
13 concerning the possibility of Jacir bringing a claim in the
14 Administrative Court in or after May of 2004?

15 THE COURT: There's an objection?

16 MR. ELLIOTT: I'm sorry, Your Honor. I think
17 Mr. Schwartz misspoke. The document indicates that the claim
18 was being presented by Mr. Bonetti, not Mr. Jacir. So he's
19 mischaracterizing the exhibit.

20 THE COURT: Do you agree with that?

21 MR. SCHWARTZ: Reluctantly, yes.

22 THE COURT: All right. Go ahead and rephrase the
23 question.

24 MR. SCHWARTZ: Thank you, Mr. Elliott.

25 Let me rephrase the question because I think your

1 counsel's objection is well taken, even though the sentence is
2 a little ambiguous.

3 BY MR. SCHWARTZ:

4 Q. Do you have any recollection in May of 2004 or
5 thereafter, and the time frame here is important, of there
6 being any discussion of any type, oral or written, concerning
7 Bonetti being about to introduce a claim to an Administrative
8 Court in Venezuela?

9 A. No. I don't recall anything like that.

10 Q. Now, you'll recall we've talked with Mr. Alcalde, whose
11 testimony you observed, and to some is extent with you about
12 this Woodstrite action in the Venezuelan Supreme Court, right?

13 A. Yes.

14 Q. That action was over by May 6 of 2004, right?

15 A. I think that's right. You would probably have documents
16 with dates on it.

17 Q. While you and Mr. Alcalde have characterized the
18 decision of the Venezuelan Supreme Court as being on some
19 standing grounds, in fact what really happened was the Court
20 said that Woodstrite had brought the proceeding in the wrong
21 court, right?

22 A. Again, I told you what I was told and that it was
23 dismissed on some procedural ground. I don't read Spanish.

24 Q. Fair enough. So after you learned that Woodstrite's
25 action in the Venezuelan Supreme Court had been dismissed on a

1 procedural ground, did you learn that Woodstrite was
2 contemplating bringing another case in the Venezuelan court
3 system to address the procedural defect in its initial claim?

4 A. I thought I already answered that no. So that answer is
5 no. Or certainly not that I recall.

6 Q. Now, toward the end of this paragraph, and again, I'm
7 not going to read it to you verbatim in light of the Court's
8 rulings, there's some discussion here about Jacir in May 2004
9 surfacing the possibility of getting some payment on some of
10 the purported notes but also needing \$200 million of the notes
11 in Caracas to do so.

12 In or after May of 2004, is that a subject to which you
13 became privy?

14 A. You know, this is very typical of Pavanelli, nobody can
15 have my notes. I told him no. And that was consistent. I
16 recall Pavanelli saying that kind of thing. He said it to me
17 many times. But this idea that Jacir was requesting notes, I
18 don't have any knowledge of that. I mean, I don't know if it's
19 true or false and I don't remember it.

20 Q. Let's move to the next paragraph here. And again --

21 THE COURT: To be precise, we're testing his memory
22 because he doesn't remember this e-mail. You're going to have
23 to stay away from the e-mail.

24 MR. SCHWARTZ: All right.
25

1 BY MR. SCHWARTZ:

2 Q. I'm going to move to the next subject in this line of
3 questions.

4 At any point in or after May of 2004, did you come to
5 learn in any manner that Pavanelli was accusing Woodstrite of
6 attempted fraud and any other civil or criminal charge?

7 A. Did I remember they argued? Pavanelli would say, often
8 when he was angry, irrational things. That was a
9 characteristic of Pavanelli. Specifically what you're talking
10 about, I have no knowledge.

11 Q. Let me try to condense the question. Did you ever get
12 any exposure or visibility of Pavanelli alleging that Manfredi,
13 Bonetti or Woodstrite had engaged in a crime or fraud?

14 A. Again, it wouldn't surprise me if Pavanelli alleged
15 that. He alleged it of Crabbe, Brown, he alleged it of me, he
16 alleged it of Jacir at times when he was angry, but I don't
17 have any specific recollection of that.

18 Q. I'm going to ask you a question about the e-mail itself
19 similar to the question I asked you about the e-mail below just
20 so the record is clear on this. Do you think it's more
21 probable than not that you received the e-mail from Pavanelli
22 from May 6, 2004 addressed to you at drichards@netwalk.com that
23 appears at the top of the page of JACIR01-005?

24 THE COURT: There's an objection.

25 MR. ELLIOTT: Your Honor, if he doesn't remember the

1 e-mail, I'm not sure how he can remember whether it's more
2 probable than not.

3 THE COURT: Again, I've told you before, I look at
4 practical solutions here, if there is one. Jacir is going to
5 testify. This is his e-mail or actually he started this with
6 his e-mail, then we get to this e-mail. The witness has said
7 that's his e-mail address. You're going to be able to ask
8 Jacir if he sent it, I assume.

9 MR. SCHWARTZ: It's actually not from Jacir. It's
10 printed out by Jacir. It's from Pavanelli.

11 THE COURT: It's from his file.

12 MR. SCHWARTZ: It is from Jacir's file.

13 THE COURT: Yes.

14 MR. SCHWARTZ: Understood.

15 Actually, Your Honor, you suggest a few questions about
16 the document I'm going to pursue.

17 BY MR. SCHWARTZ:

18 Q. So, Mr. Richards, as Judge Sargus has just pointed out,
19 the document we're looking at bears the Jacir bates stamp
20 numbers, right?

21 A. Okay.

22 Q. And I'm going to represent to you, and you'll have no
23 argument from anyone because there's a stipulation to this
24 effect, that documents with Jacir numbers have been produced by
25 Jacir's US counsel in this litigation.

1 A. All right.

2 Q. You can take that as a given.

3 A. Okay. I'll assume that for purposes of your question.

4 Q. So you appear to have been copied on the e-mail from
5 Pavanelli, at least as it appears at the top of page
6 JACIR01-005, right?

7 A. As I think we discussed that that's my e-mail address up
8 there.

9 Q. And I'm not trying to make this unnecessarily agonizing.
10 But the same is true of the one that appears you sent at the
11 bottom. It's got your e-mail address, right and your phone
12 number?

13 A. Which?

14 Q. The one at the bottom of JACIR01-005.

15 A. That is my e-mail address, as we discussed.

16 Q. It's also your phone and fax number below your name,
17 right?

18 A. Yes. That's still my phone number.

19 Q. Do you have a copy of the e-mail that appears at the
20 bottom of page JACIR01-005 or the one that appears at the top
21 of the page?

22 A. The one that's on the screen?

23 Q. No. I mean in your files, Skye Ventures' files?

24 A. I've produced everything I had. I think we went through
25 this at length in my deposition.

1 Q. Indeed. But you didn't produce this document, right?

2 A. Right. I didn't produce any e-mails from 2004 or 2003.

3 Q. And the reason you didn't produce e-mails is that you
4 didn't retain them, right?

5 A. I had nothing that old. Nothing from any deal, this
6 deal or any deal.

7 Q. May of 2004 was just three months before this lawsuit
8 was commenced, right?

9 A. Yes.

10 Q. And you were already readying a litigation offensive at
11 that time, right?

12 A. That was one of the possible avenues, maybe probable
13 avenues of recovery at that time.

14 Q. Let's move to another document. This will be D-576.

15 THE COURTROOM DEPUTY: D-576.

16 BY MR. SCHWARTZ:

17 Q. Before we look at this document, Mr. Richards, as of
18 early June 2004, you weren't satisfied with the information you
19 were getting from Pavanelli as of that time, right?

20 A. As of what date?

21 Q. Early June 2004.

22 A. We had made our decision. We had all the information we
23 needed for the key investment thesis, that is was the Attorney
24 General decision final and binding.

25 Q. But as the information coming from Pavanelli himself,

1 you weren't yet satisfied with what he was telling you, right?

2 A. Well, I was satisfied but others were asking for some
3 additional information.

4 Q. Who were the others?

5 A. So at this time in June there's a firm called Libra
6 that's run by a fellow named Jess Ravich, ex Drexel guy, big
7 bond guy. And we had started the process of exploring another
8 one of our possible liquidity events and that is having Libra
9 take our position at some sort of profit and carry the lawsuit
10 forward.

11 So Libra had a team of young analysts on the deal and
12 they were requesting some of these detailed information. And
13 so rather than -- while we were discussing with them, look,
14 this stuff doesn't matter, your investment thesis has to be the
15 same as ours, it's an investment that's not based on some of
16 these details, it's based on whether the Attorney General's
17 decision is final and binding. And I think they ultimately
18 arrived at that same conclusion. But in the meantime, we had
19 these young guys just, you know, working for Jess and they
20 weren't partners and trying to paper their file and get as much
21 information they can and asking. So rather than fighting with
22 them about what's relevant and not relevant, we just sent the
23 request to Pavanelli.

24 Q. Ultimately, Libra declined to invest in this
25 opportunity, right?

1 A. In the fall, Libra actually considered it a good
2 investment. So in the fall they got through diligence, they
3 thought it was a good deal. They took it to the partners and
4 the partners passed for a couple of reasons. One, they didn't
5 like the fact that I had so much control over the deal and
6 second, they thought the ten-year sort of the time frame was
7 just too long, the potential time frame. That was why they
8 passed. But they passed in the fall, right? I think.

9 Q. Have you completed your answer?

10 A. Yeah.

11 MR. SCHWARTZ: I'm going to move to strike the answer
12 as unresponsive to the question and fraught with hearsay.

13 THE COURT: The implication was that there was some
14 reason they hadn't invested. I think he explained that. So
15 I'm going to overrule the objection.

16 BY MR. SCHWARTZ:

17 Q. So you were satisfied with the information you had from
18 Pavanelli as of early June 2004; is that right?

19 A. Again, I don't want to -- I know you don't want to hear
20 me keep saying this but we weren't basing our investment on
21 information from Pavanelli. We were basing our investment
22 decision on, is the Attorney General decision final and
23 binding? For right or wrong, we had reached that conclusion.
24 We didn't care about other information from Pavanelli. We were
25 trying to make a deal with Pavanelli. That's what was going

1 on.

2 Q. I think I understand what you're saying. Let's take a
3 look now at D-576.

4 A. Yes.

5 Q. Initially just to touch on the foundation here. This
6 document bears the Skye bates stamp numbers 006469 through
7 6471, right?

8 A. Yeah.

9 Q. You understand that means Skye Ventures produced the
10 document in this litigation, right?

11 A. I -- I'll take your word for that.

12 Q. And looking at the form of the document, the first page
13 is a fax communication sheet from Pavanelli to you, right?

14 A. Yes.

15 Q. And you received this fax from Pavanelli, correct?

16 A. I don't remember this specific fax but, again, I'm
17 not -- I remember kind of the context of within which it
18 occurred and so I don't -- I'm looking at it as I'm answering
19 it.

20 Q. Mr. Richards, didn't you submit an affidavit within a
21 few weeks of today in which you discussed this document?

22 A. I don't recall that I did. I'm not saying I didn't, I
23 just don't recall it.

24 MR. SCHWARTZ: Excuse me for one second.

25 MR. LUCAS: May I approach the court reporter, Your

1 Honor?

2 THE COURT: You may.

3 MR. SCHWARTZ: Your Honor, we didn't really think this
4 would be necessary so we're creating exhibits on the fly here.
5 This will be Defendant's Impeachment Exhibit 12. Once we get
6 copies we'll distribute them.

7 THE COURT: What are you numbering this exhibit to be?

8 MR. SCHWARTZ: Defendant's Impeachment 12.

9 THE COURTROOM DEPUTY: D Impeachment 12.

10 THE COURT: You may not have this but if you do, it
11 would be helpful to me if we know the ECF number. It's not on
12 here but maybe you have that handy, maybe you don't.

13 MR. SCHWARTZ: We'll figure that out. The ECF number.

14 THE COURT: There it is. I've got it.

15 MR. SCHWARTZ: 656, it appears.

16 THE COURTROOM DEPUTY: 658.

17 THE COURT: 658-6. I note for the record that means
18 that at this point there had been 658 documents filed in this
19 case and that was almost a month ago.

20 With that observation, you may continue.

21 MR. SCHWARTZ: All right. I'm now the only one
22 without the exhibit but I'll work with what's up on the screen.

23 BY MR. SCHWARTZ:

24 Q. So, Mr. Richards, you used to be a rock and roll
25 litigator, right?

1 A. I don't know if that's the correct phrase but I had
2 success.

3 THE COURT: I remember you using that phrase.

4 THE WITNESS: I was rocking and rolling. Sorry. Let
5 me take that back. I thought I was a good litigator but it was
6 back, you know, early '80s, of course.

7 BY MR. SCHWARTZ:

8 Q. Back in the early '80s there was this process called
9 discovery in litigation, right?

10 A. Sure.

11 Q. Parties would ask for documents to be exchanged, et
12 cetera?

13 A. Yeah.

14 Q. And if one side had misgivings with the way the other
15 dealt with document issues, it could go to the Court and seek
16 relief in various ways, right?

17 A. Yeah.

18 Q. So you must know that sometime within the last two
19 months, Venezuela filed a motion in limine in this case
20 concerning the alleged spoliation of documents by Skye, right?

21 A. I can shortcut you. Looking through this affidavit I
22 now remember this.

23 Q. So when you say you now remember this, are you saying
24 you now remember D-576?

25 A. I remember this was an example in the affidavit of

1 records that we had retained. I think this probably came from
2 my files at Crabbe, Brown, files that had been merged by that
3 time.

4 Q. That's not quite what it was in the context of the
5 motion. But anyway, let's just look at paragraph 6 of this
6 affidavit very quickly. I'm sorry, paragraph 12.

7 So here's a paragraph from an affidavit you signed under
8 oath or a declaration, right?

9 A. Yeah.

10 Q. And in paragraph 12, without parsing this too closely,
11 you were talking about the document that's D-576, right?

12 A. Yep.

13 Q. With that behind us, you'll now acknowledge that D-576
14 consists of a fax cover sheet, then a fax from Pavanelli to
15 you, right?

16 A. Yes.

17 Q. And then there's handwritten notations on various parts
18 of the faxed letter, and that's your handwriting, right?

19 A. Yes.

20 MR. SCHWARTZ: I should note, Your Honor, for the
21 record, lest there than any doubt, we're not going to be
22 introducing this for the truth of any matters but for other
23 purposes.

24 BY MR. SCHWARTZ:

25 Q. Let's take a look at the actual letter that Pavanelli

1 faxed to you with a date of June 15th, 2004. All right?

2 A. Yes.

3 Q. First of all, to confirm the date of the fax because
4 there's some -- may have been a problem with the fax machine on
5 the first page. Look at the second page on the top and you'll
6 see there's an 06 for June, a 15 for the date and then an 04
7 for the year, right?

8 A. Yes.

9 Q. And then it actually says under your name where you're
10 addressed, June 15, 2004, right?

11 A. Yes.

12 Q. So this is a letter Pavanelli sent to you on that date,
13 right?

14 A. Yes. It appears that way.

15 Q. He says at the beginning, following your your request
16 for informations over some questions, these are my answears:

17 Do you see that? First sentence.

18 A. Yes.

19 Q. And then there's three categories of information through
20 this letter and numbered questions that follow -- numbered
21 answers that follow, right?

22 A. Yes.

23 Q. So, trying to interpret this document is a little bit
24 like playing the game show Jeopardy because we've got the
25 answers but we don't have the questions, right?

1 A. Okay.

2 Q. And by the way, what you said in your affidavit that
3 we've just looked at, Defendant's Impeachment Exhibit 12, is
4 that you didn't send any written questions to Pavanelli. You
5 must have been talking to him on the phone and then this is how
6 he responded, right? That's your testimony?

7 A. I don't think that's what I said there. These are
8 questions, I believe, from Libra. And so I think my
9 handwritten notes are from a phone conversation that Pavanelli
10 and Libra and others were participating.

11 Q. Let's just go one step at a time. Pavanelli addressed
12 this letter to you, right, not to Libra?

13 A. He faxed -- apparently it looks like he faxed it to me.

14 Q. But it's addressed to Mr. David Richards, Skye Venture,
15 right?

16 A. Yes. He faxed it to me. And I would have, no doubt,
17 faxed it to Libra if these were their questions.

18 Q. Well, you haven't produced any fax from you to Libra in
19 this case, have you, of this document?

20 A. Again, I don't have everything in front of me that we
21 produced. If you say we haven't, I'm not arguing with you.

22 Q. If you have it, your counsel can show it to you on
23 redirect. In the meantime, you also don't have any document at
24 all that contains in writing the questions to which Pavanelli
25 apparently was responding, right?

1 A. There was obviously such a document. I believe Libra
2 would have it. I don't, obviously.

3 Q. Did you ever have it?

4 A. I might have just forwarded Libra's questions to him.

5 Q. But you had it at one point in June of 2004?

6 A. Possibly.

7 Q. But you didn't retain it, correct?

8 A. If our attorneys have not given it to you, I don't know
9 what to say about that. I obviously don't have it. I've given
10 them everything I have.

11 Q. If they have it, they can show it to you on redirect.

12 A. Okay.

13 Q. So in the meantime, we're going to have to try to define
14 the questions in light of the answers. So the first category
15 is original issue of Bandagro notes, right?

16 A. First of, yeah, three categories.

17 Q. You're saying this was of concern to Libra, not you,
18 right?

19 A. These were their questions. Again, they were
20 investigating taking on the notes.

21 Q. You didn't care. You had no interest in the original
22 issue of the Bandagro notes, right?

23 A. We had already reached our conclusion that the Attorney
24 General's decision was final and binding. Our investment
25 thesis was satisfied. This was in relationship to an exit

1 event or liquidity event that we were trying to make happen.

2 Q. As far as you were concerned, whether the bonds were
3 originally issued or not was not material to your investment
4 thesis, correct?

5 A. That was decided. That was part of the Attorney
6 General's decision was final and binding.

7 Q. So now let's look at answer number 1. Pavanelli said, I
8 dont have any documents. And then answer 2 he said, I dont
9 think that A-N-O-N-E can be located. Right?

10 A. Yep.

11 Q. And then let's skip down to answer number 6. He wrote,
12 I dont know. Do you see that?

13 A. Yes.

14 Q. What was the question to which he was responding?

15 A. I have no idea.

16 Q. Look at number 8. He wrote, as above. What was the
17 question to which he was responding?

18 A. I don't know.

19 Q. Let's move to category number 2: Issues from 1981 the
20 time Mr. Pavanelli buys. Do you see that?

21 A. I'm sorry, I was reading. I lost track of that question
22 halfway through it.

23 Q. The second category.

24 A. Yes.

25 Q. Issues from 1981 the time Mr. Pavanelli buys.

1 A. Yes.

2 Q. That's a little confusing because Mr. Pavanelli never
3 claimed to buy in 1981, right?

4 A. To the time probably.

5 Q. So your interpretation of this is that Libra, in doing
6 its own due diligence, was interested in understanding the
7 chain of title of the purported Bandagro notes through and
8 including the time Pavanelli got his hands on them?

9 A. Like I said, I don't want you to characterize Libra,
10 right. Libra was Jess Ravich. Very, you know, a big bond guy.
11 He would have made the decision. These were young analysts who
12 were just gathering information. Everything -- they were
13 asking all the questions they could think of. I don't know how
14 much interest, if any, that it was. We do know they asked --
15 they had this category in this e-mail.

16 Q. I'm just trying to understand the category. Looks like
17 they were asking you and you were communicating with Pavanelli
18 about chain of title issues, right? You understand what that
19 means, right?

20 A. Well, they're saying issues from 1981 the time
21 Mr. Pavanelli buys. And it was known that he bought in '86
22 or '87. So I think it's missing in the categories it was the
23 issue, the time from when they were issued to Pavanelli buys
24 and then Mr. Pavanelli's purchase. They're two separate
25 categories. Wouldn't make any sense any other way to me.

1 Q. I know. I'm not disagreeing. So it looks like they
2 were interested in understanding what happened from the alleged
3 issuance of the notes in 1981 until Pavanelli entered the
4 scene, right?

5 MR. ELLIOTT: Your Honor, maybe I'm splitting a hair
6 here but I think it's perfectly fine for the witness to talk
7 about what he understood it to mean. But the questions are
8 coming out for him to interpret what Libra meant. And I think
9 that's too different.

10 THE COURT: Well, the information, certainly, no doubt
11 about that. But why Libra didn't invest, I'm not going to find
12 a lot of usable facts there. As far as what the letter says,
13 that's a different matter.

14 MR. SCHWARTZ: I'm not at all -- let me make very
15 clear, we're not acquiescing for a second in the proposition
16 that this has anything to do with Libra. There's nothing on
17 the face that would suggest that.

18 THE COURT: I only mention that because I think we're
19 getting bogged down with Libra as opposed to what's in the
20 letter.

21 MR. SCHWARTZ: I'm just trying to understand what's in
22 the letter. I'm not interested in Libra right now.

23 BY MR. SCHWARTZ:

24 Q. Whether there's a semantic difference or not, I think
25 we're on the same wavelength here as to what the second

1 category appears to comprise, Mr. Richards.

2 So the first item under there also seems to be missing a
3 word. Pavanelli has written, I was involved with Cordero in
4 any way, I only saw Cordero Vale for the first time in a Court
5 of Justice in London back in 1988 for the first time in my
6 life.

7 Do you see that sentence?

8 A. That's what it says.

9 Q. Do you agree with me that Pavanelli left out the word
10 not between was and involved in the first three words?

11 A. I think that's another word that's missing there.

12 Q. And Cordero, also referred to as Cordero Vale, the
13 person he's referring there to is the Waldemar Cordero Vale,
14 one of the alleged signers of the notes, right?

15 A. You're asking me is Cordero Vale one of the people who
16 signed the notes or alleged to have signed the notes?

17 Q. No. Believe me, I'm not asking you that. I'm asking
18 you whether you understand that the person that he's referring
19 to there is one of the three people who is alleged to have
20 signed the notes?

21 A. Yes.

22 Q. And for whatever reason, Pavanelli is disavowing any
23 involvement with him except at some proceeding in a court of
24 justice in London, right?

25 A. That's what's written on this page.

1 Q. And when you received this fax from Pavanelli, did you
2 understand that reference to a court of justice in London back
3 in 1988 being a reference to the criminal proceeding that
4 resulted in Pavanelli being convicted of conspiracy involving
5 fake Bandagro notes?

6 A. Well, we knew, generally speaking, that there was this
7 case in London and that he was acquitted of possession of false
8 instruments and convicted of conspiracy, generically. So I
9 think we knew that at the time. I don't know how much more or
10 less we knew than that.

11 Q. And that conspiracy charge concerned fake Bandagro
12 notes, right?

13 A. I'm telling you what I remember we knew at the time. We
14 didn't have records or anything like that at this time, I'm
15 pretty sure.

16 Q. There's no crime of generic conspiracy, right?

17 A. I don't know what the laws of London or England were.

18 Q. All right. Let's turn to the second page of the letter.
19 Again, under the second category here the answer to number 3 is
20 no. Right?

21 A. Correct.

22 Q. Do you know what the question was?

23 A. I don't know.

24 Q. Let's look at the third category of this document. It
25 starts with the heading, Mr. Pavanelli's purchase of the Notes.

1 That one's unambiguous, right?

2 A. Yes.

3 Q. Okay. Let's go through some of his answers here in some
4 detail. So the first item he says, during June of 1987, I
5 don't recal the exact date. I should get the purchase/sale
6 agreement but its deposited with a fiduciary deed with Austrian
7 bank safe box. I cannot gettit just like that, it would
8 require time and money.

9 When you got this written communication from Pavanelli
10 in mid June 2004, did that sound like a plausible explanation?

11 A. Again, this was -- I was not looking for an explanation.
12 I was relaying information to somebody else who was asking
13 these questions. So I don't know if I viewed it in that way.
14 I don't even recall having any thought about that.

15 Q. And look at item 3. Pavanelli wrote, the price cannot
16 be disclosed for no reason what so ever and its not necessary.

17 Do you see that?

18 A. Yes. That's what he says.

19 Q. And then in number 4 he says, the notes have been sold
20 by Mr. Alfredo Guillermo Agaard.

21 Skipping down lower he says, I dnt know were he lives or
22 were he is.

23 A little further: I figure out he could be in Australia
24 or Caracas. Right?

25 A. I think you read that correctly.

1 Q. He reiterates, apparently, something he told you before
2 in number 5 when he says, the funds came from some of mine
3 private german investors and some from Gruppo. Had he told you
4 that before?

5 A. He -- he told me something similar to that, yes.

6 Q. And let's look at number 6. He told you we have a,
7 quote, Purchase & sale agreement, quote, this document cannot
8 be produce, at the time we did the transaction under a banking
9 law, therefor we are bound by the, quote -- all capital
10 letters -- BANKING SECRECY LAW, end quote, we cannot disclose
11 this document, if we did so, we would brake, B-R-A-K-E, the
12 law.

13 Have I read that correctly?

14 A. Yeah. I have no idea what he's talking about and don't
15 recall it, but you certainly read it correctly.

16 Q. Now when you got this June 15th, 2004 fax from
17 Pavanelli, you couldn't possibly have believed what was in that
18 item number 6, could you?

19 A. I don't recall receiving this. My primary function
20 would have been passing it on to somebody else and so I don't
21 recall reflecting on any of this stuff.

22 Q. Wait a second. I thought we went through this with the
23 affidavit. You do recall receiving this.

24 A. I recall that this was received. It's obviously mine
25 but it's as to what's inside of it I don't recall reflecting on

1 it or what's in there. That is my handwriting on the thing so
2 I obviously received it.

3 Q. And you don't recall being given so bizarre an
4 explanation as this that the purchase and sale agreement
5 couldn't be produced because it was subject to some banking
6 secrecy law which would result in the law being broken if it
7 was shared with you?

8 A. Again, I don't recall him saying that. I don't recall
9 if he actually turned that stuff over. I just don't recall it.

10 Q. All right. Let's look at number 7 under the category
11 Mr. Pavanelli's purchase of the notes. He writes there, none,
12 at the time the banking rules and regulations did oblige to to
13 keep record of funds and its origin.

14 Have I read that correctly?

15 A. I think so.

16 Q. It looks like there, again, Pavanelli forgot to put the
17 word not in, right?

18 A. Perhaps.

19 Q. It wouldn't make any sense otherwise, right?

20 He says none. It looks like somebody was asking for
21 something, right, of which he had none. Is that fair?

22 A. Well, I don't know. Again, I have to see the question
23 and know it in context. But I'm just not arguing with you.

24 Just doesn't -- you want to put a word in there, you can put a
25 word in there.

1 Q. I didn't receive this in 2004, Mr. Richards, you did.
2 And you obviously paid some attention to it because you put
3 handwritten notes on it, right?

4 MR. ELLIOTT: Your Honor, can we -- it just seems like
5 we're arguing over the witness' answer at this point.

6 THE COURT: We are. And perhaps the handwritten notes
7 would help. It's more of a subject matter here.

8 BY MR. SCHWARTZ:

9 Q. Let's move to number 8 and then we'll go to the
10 handwritten notes. Maybe number 8 is more familiar with you.

11 He says, I told you many times, from some german clients
12 of Gruppo and some from Gruppo directly.

13 What was the question he was answering there?

14 A. I don't know.

15 Q. Had he told you anything previously about German clients
16 of Gruppo?

17 A. I don't recall that at the moment. He may have.

18 Q. Let's look at the handwritten notes. These are all
19 yours, right?

20 A. Yes.

21 Q. I'm not going to ask you about all of them but I'll ask
22 you about some of them. So let's go back to the first
23 category. Original issue of Bandagro notes.

24 Under item number 2 or after item number 2 you seem to
25 have put a caret in there and then created a box and you wrote

1 something in the box, right?

2 A. Yes.

3 Q. The last line you wrote there is, tried to check with
4 bank in Milan, no record. Right?

5 A. Yes. That's what it says.

6 Q. Did you try to check for something with the bank in
7 Milan and find that there was no record of it?

8 A. So these notes were made during a conversation that I
9 generally have a generic recollection of between Libra and
10 Pavanelli where Libra was asking questions of Pavanelli. You
11 can see from these notes that -- and the conversation was a
12 long one. It was a couple of hours. They were very thorough.
13 Typical. It's not as bad as being cross-examined by you but
14 these analysts are very thorough and they go through detailed
15 things.

16 So you can see from my notes that I'm not very good at
17 doing this thing because I'm writing stuff down but I'm also
18 trying to focus on what's going back and forth. So as to this
19 point, as with a couple of other of these, I look at what I was
20 trying to write about. And I just -- I can't remember exactly
21 what discussed.

22 So if I'm referring to whether I checked with the Bank
23 of Milan or he checked with the Bank of Milan or somebody else
24 checked with the Bank of Milan and what the records were, I
25 don't remember. But I did write that down.

1 Q. So tell me about the call. Who arranged it?

2 A. I don't remember. The call occurred, it was part of
3 this diligence process that Libra was going through and they
4 wanted to speak with Pavanelli. So I arranged -- we arranged
5 for that. They had some questions. I'm pretty sure these were
6 the subjects that they wanted to discuss. And we got on the
7 phone.

8 Jess wasn't there. We were having separate
9 conversations with Jess and his partner, the decision-makers at
10 the firm. These were three -- I think there were three
11 analysts from Libra on this phone call.

12 Q. Those were the young kids, right, the analysts?

13 A. Younger than Jess. Jess was a really sort of veteran in
14 the industry. And if you're a guy like Jess, you turn it over
15 to young guys and you say work it up, and they do and they
16 bring it back to you and ultimately you might make a decision
17 or you make a decision and take it to your investment
18 committee.

19 Q. And the young guys' job is to ask the questions, right?

20 A. Gather information, right. So this was part of that.
21 And they -- I think we -- I don't recall the specifics of the
22 conversation. We went through this kind of stuff and maybe
23 more. Maybe additional things. If I were my normal self in
24 the conversation I'd be telling the young guys, look, you just
25 have to focus on the AG decision. It's really all that's

1 important here. And they were like young guys and they were,
2 you know, going forward to gather the information.

3 Q. Wanted to find out what really had happened, right?

4 A. They wanted the information. I don't know. They were
5 trying to find every detail they could find. That's in their
6 DNA. That's what they do, right?

7 Q. They try to make prudent investment decisions, right?

8 A. Yeah. They were trying to figure out their own
9 investment thesis at the time.

10 Q. Their investment thesis general doesn't involve --
11 doesn't involve building a lawsuit against a foreign sovereign
12 government?

13 THE COURT: This is what we said you weren't going to
14 get into. You're comparing this witness' due diligence with
15 Libra's due diligence and that I'm not going to permit.

16 BY MR. SCHWARTZ:

17 Q. So how many people were on the call?

18 A. Well, it looks like I was on the call, right. The Libra
19 people were on the call and Pavanelli was on the call. So who
20 else was on the call, I don't know.

21 Q. Was Usuelli on the call?

22 A. I don't know.

23 Q. You say the call lasted several hours?

24 A. At least a couple, I would guess.

25 Q. To the best of your recollection, was it one of the

1 Libra analysts who indicated that he or she had tried to check
2 with the bank in Milan but couldn't find any records?

3 A. No. I don't know. Again, I wouldn't guess that but I
4 don't know.

5 Q. All right. Let's look down the right-hand column.
6 There's another reference here to a trial in London. That's
7 the same Pavanelli criminal trial that resulted in the
8 conviction for conspiracy; is that right?

9 A. Yes. That's the paragraph.

10 Q. Did anybody ask Pavanelli during this phone call to
11 explain what had happened to him in that criminal proceeding?

12 A. I think so.

13 Q. What did he say?

14 A. Well, I don't exactly remember what he said but I'm sure
15 it was consistent with what he always said. He was set up by
16 Venezuela. The guys who -- they picked him up. No one would
17 have known what he was doing, so he was set up. He was only
18 convicted of conspiracy and that kind of stuff. So he had a
19 consistent story there.

20 Q. All right. Let's look at your handwritten notes on the
21 second page. At the top there you wrote, bag with diamond. 10
22 plus million. 6 million currency. What's that all about?

23 A. I don't remember.

24 Q. Did Pavanelli tell you that part of the alleged
25 consideration for his acquisition of the over billion dollars

1 in the purported notes was a bag with diamonds?

2 A. I think I told you what he had said, right. So, what I
3 recall him saying. And he might have -- I think Luis mentioned
4 this, that there were cash, jewels and notes that he gave it
5 for. So he might have said that in the call. I don't remember
6 the call though.

7 Q. Your understanding --

8 A. I don't remember the specifics of the call.

9 Q. Your understanding of the deal was he actually took a
10 bag of diamonds and just handed it to someone?

11 A. I didn't have an understanding there. There was a
12 closing in a bank in London.

13 MR. SCHWARTZ: Move to strike the last part of the
14 answer to the extent it's based on any kind of hearsay. If
15 that's his understanding, that's fine.

16 THE COURT: I didn't catch that from the answer.
17 Explain that.

18 MR. SCHWARTZ: He made some assertion that there was a
19 closing in London which he wouldn't have any possible
20 foundation for testifying about because he sure wasn't there.

21 THE COURT: Aren't we still looking into what he knew?

22 MR. SCHWARTZ: If it's limited to what he was told,
23 that's fine.

24 THE COURT: Then we're in agreement.
25

1 BY MR. SCHWARTZ:

2 Q. So you're a sophisticated investor, right, Mr. Richards?

3 A. Well, you might have people that give you different
4 opinions about that but I kind of, I mean, certainly now I
5 really know what I'm doing. I'm 65 years old and I've done it
6 for a long time.

7 Q. In 2004 you regarded yourself as a sophisticated
8 investor?

9 A. Probably not quite as good as I am now but I thought I
10 was then. And my investor group thought I was pretty good.

11 Q. And you developed a following that comprises this
12 investor group, right?

13 A. I have consistent investor groups that's grown since
14 1989.

15 Q. And those investors count on you to make prudent
16 investment decisions, right?

17 A. Well, what they really count on me for is to -- you can
18 argue about prudence one way or the other but they count on me
19 to look at risk and decide whether it's overcome-able. So in
20 all the deals we look at, there's some risk and they rely on me
21 to look at deals where we can overcome the risk. So like here,
22 for example, the risk was we looked at whether the Attorney
23 General's decision was final and binding. We concluded it was.
24 And I decided.

25 That's the kind of decision they would typically rely on

1 me for. I would create an investment thesis that was focused
2 on the key risk, try not to get distracted by side items. I
3 was good at focusing on that and making a judgment about that.
4 I've almost always been right.

5 Q. And there was a risk, was there not, as of the time you
6 received D-576 that Pavanelli was making this whole story up,
7 wasn't there?

8 A. That was not a risk in the investment thesis, right,
9 that, as I just said, there's all these deals that have --
10 they're complex, they're big companies. You have to figure out
11 what's the key risk here and try not to get distracted by other
12 stuff that's not part of the key risk, the investment thesis.
13 Here, the investment thesis was, is the Attorney General's
14 decision final and binding? If that's your investment thesis
15 and you believe that the answer to that question is yes, that
16 simplifies your consideration or your what you care about other
17 collateral items.

18 So, again, I would say by this time when Libra was
19 looking into this, we had already made the investment thesis,
20 we made the decision that it was an investment we wanted to
21 make and the rest of the time frame we were trying to get a
22 deal right that we were comfortable with.

23 Q. So you didn't want to be distracted by whether the notes
24 were forged in the first instance, right?

25 A. I didn't want to be -- remember, if your answer to the

1 question, is the Attorney General's opinion is final and
2 binding, it's irrelevant what anyone thought about how the
3 notes -- there were opinions. Somebody said yes, somebody said
4 no. Doesn't matter if the Attorney General's decision is final
5 and binding.

6 So, again, that's -- I don't know how else to answer the
7 question. I didn't want to get involved in he said this or she
8 said that or they said that. We had a final and binding
9 decision from the highest legal official in Venezuela. That's
10 what we focused on.

11 Q. And just to be clear about this, it was not material to
12 your investment thesis whether the notes were forgeries,
13 correct?

14 A. Once you conclude that the Attorney General's decision
15 is final and binding, they're not. That's the answer to the
16 question.

17 Q. All right. We'll move on to another document. D-579.

18 THE COURTROOM DEPUTY: D-579.

19 BY MR. SCHWARTZ:

20 Q. Mr. Richards, I'm showing you D-579. It's an e-mail
21 from Pavanelli to you from June 18th, 2004. It's got a
22 SKYE006083 bates number. So, from that, you can tell this was
23 produced by your lawyers in the case.

24 This is dated just three days after D-576. Do you
25 recall receiving this e-mail from Pavanelli in June of 2004?

1 A. No.

2 Q. Taking into account that it's an e-mail that on its face
3 indicates it was sent at a time where you were in the throes of
4 developing and implementing your investment thesis and that
5 your lawyers produced it in the case and it's got your e-mail
6 address on it, do you think it's more likely than not that this
7 is an e-mail that you received?

8 A. So just to correct the preamble to your question, we
9 were not developing our investment thesis in the middle of June
10 of 2004. We had had -- our investment thesis was, from the
11 beginning, was this decision final and binding, and we'd
12 already reached the conclusion that it was.

13 Q. When did you reach that conclusion? When was the
14 investment thesis finalized?

15 A. Well, again, when -- so we went through this discussion
16 about discovery, initial diligence and then final diligence,
17 right? So at the end of initial diligence you're pretty
18 certain that you're right. And then when you go through final
19 diligence you're trying to make sure you're right before you
20 close. So I would say that we had reached the conclusion that
21 the decision was final and binding, not we, that Alcalde had,
22 and gave me that firm opinion, no less firm than he gave it in
23 this courtroom, say around the end of February, early March of
24 2004. And that's when we started focusing on the real
25 expensive part about diligence. We were traveling all over the

1 world, you're trying to cut the deal with the guys, that sort
2 of thing.

3 So I would say, to put it in context, we had reached
4 that conclusion end of February, early March kind of time
5 frame.

6 Q. All right. I'll rephrase my question. Given that this
7 document bears a Skye Ventures bates stamp number, it indicates
8 that it was sent to the e-mail address you used in June 2004.
9 In June 2004 you were in the midst of some phase of your due
10 diligence process, as you describe it. Taking all that into
11 account, do you think it's more likely than not that you
12 received D-579?

13 A. Again, I still disagree with your preamble but I do
14 remember that post the Libra call, there was a further exchange
15 of documents. I don't remember the specific e-mail, but it's
16 not, what I've read of it here, I don't -- it's not
17 inconsistent with what I remember was going on at the time.
18 Libra was --

19 Q. I'll ask you some specific questions about some of the
20 subjects and maybe we'll see if that --

21 A. So Libra was continuing to move forward. And they were
22 asking for other stuff.

23 Q. We'll see if this jogs your memory if we talk about some
24 of the subjects, as Judge Sargus has suggested.

25 In the middle of June 2004 or at any other time, do you

1 recall Pavanelli telling you he needed money to pay an Italian
2 criminal lawyer by the name of Cajelli, C-A-J-E-L-L-I?

3 A. Well, do I recall this occurring in the middle of June
4 of 2004?

5 Q. Or at any time?

6 A. Listen, Pavanelli was always asking me for money.
7 Always making up a reason. That was sort of the control, the
8 practical control I ever had over the deal. So I could pretty
9 much -- and he would come up with -- he always wanted money,
10 right? So the fact that in here, this e-mail, there's a
11 request for money is nothing unusual. I think, though, you're
12 referring to this Cajelli fellow and I do remember the name
13 Cajelli or Cajelli or however you say it. I remember it more
14 in connection with stuff that occurred in '05 and '06 and I
15 think we actually contacted the guy and part -- the lawyers did
16 at least.

17 But I don't remember hearing the name Cajelli in June.
18 Not saying I didn't. So this e-mail says I did. I don't want
19 to argue with you about that.

20 MR. ELLIOTT: Your Honor, just belated but
21 Mr. Schwartz, in his question, indicated that he characterized
22 Professor Cajelli as a criminal lawyer and I don't see that in
23 the document anywhere. So I don't think there's foundation for
24 that.

25 THE COURT: Well, if you can establish that but it's

1 not in the document. Would you agree?

2 MR. SCHWARTZ: Yes. But I've been directed and I've
3 accepted, by the Court's rulings, that I need to stay away from
4 the e-mail verbatim and try to jog --

5 THE COURT: This is different. This came from Skye,
6 right? I'm not suggesting that I changed my ruling but the
7 other ruling was something that came from Jacir. In any event,
8 the more narrow issue is the word criminal lawyer or the phrase
9 criminal lawyer is not in that first paragraph.

10 MR. SCHWARTZ: I understand. I think I have a
11 good-faith basis for asking the question. If I can't just read
12 the e-mail to him, and I'm not complaining about this, I'm just
13 trying to frame questions.

14 THE COURT: You haven't asked to do that. But go
15 ahead.

16 MR. SCHWARTZ: I haven't --

17 THE COURT: This is something from Skye. The other
18 document we were hung up on didn't come from Skye.

19 BY MR. SCHWARTZ:

20 Q. Did you ever come to learn that there was a criminal
21 lawyer named Cajelli who was involved with Pavanelli in some
22 way?

23 A. I remember, I think we discussed this in my deposition,
24 I became aware that what I thought was a bankruptcy case was
25 going on that had accusations against Pavanelli but it was

1 later that the name Cajelli came into focus. So obviously I
2 didn't send him money for something about Professor Cajelli.

3 I was aware there was this -- I probably was aware there
4 was this thing I thought was a bankruptcy going on. I'm still
5 not satisfied I actually know what was going on.

6 Q. Have you ever come to learn that Pavanelli was convicted
7 in Turin, Italy for crimes involving fake Bandagro notes?

8 A. I don't think that's true. I've been told it was
9 something different.

10 Q. You don't have personal knowledge one way or the other.
11 I don't need to belabor this with you.

12 THE COURT: Just to be clear from this exchange,
13 there's no evidence whatsoever is the question and there's an
14 answer that you didn't know. At this point that's out.

15 MR. SCHWARTZ: I'm happy to move on.

16 THE WITNESS: Long after the lawsuit -- sorry.

17 THE COURT: Go ahead. You may ask the next question.

18 BY MR. SCHWARTZ:

19 Q. So let's take a look at item 3 on this e-mail from the
20 Skye production. In here Pavanelli wrote, I'm ready to send
21 100 million dollar -- 100 M. notes to Alcalde but we need
22 money.

23 Do you see that?

24 A. I do.

25 Q. Do you have a recollection of Pavanelli holding some

1 notes hostage at this time and trying to extract money from
2 you?

3 A. You remember that in June was the time frame when this
4 failed deal for Crabbe, Brown to file a lawsuit where they
5 would have some input into and part of that was they had to
6 send notes. He had to give physical possession of the notes to
7 Crabbe, Brown. And that's -- which never occurred, of course.
8 So I think that's what he's referring to.

9 Q. Okay. Let me direct your attention now to paragraph 5.
10 So here Pavanelli wrote, I will try to get documents from the
11 London case, but these documents will not be free to gives
12 copies around, you have to take a very carefull attitude, if we
13 are waking, quote, the sleeping dog, end quote, it could be a
14 boomerang against me, remember this, and it is not the moment
15 to get more trable. Presumably trouble.

16 Do you recall Pavanelli saying anything to you, orally
17 or in writing, in or about June 2004?

18 A. So I was going to say yes until you said about this
19 date. So, generically, of course we discussed these two cases,
20 as I said. The Swiss case and the London case. He had his
21 what he said about those cases. He provided me with the Swiss
22 case where he was accused and then acquitted and that the Court
23 said the notes were fine. Then I had -- I know I might have
24 asked him, where's the records to the London case, and he said
25 he couldn't get them. And that was true. We later tried to

1 get them and couldn't get them.

2 Q. And what was your understanding of the sleeping dog he
3 was afraid about waking?

4 A. I had -- I don't know what he's talking about there.

5 Q. Let me ask you to look down at item number 7 here.
6 Pavanelli wrote, some funds are need it to take care of very
7 sensitive matter to avoid further problems, you help and
8 understand is now required.

9 Do you see that?

10 A. Yes.

11 Q. What was your understanding of what he was addressing
12 there?

13 A. I, again, I don't specifically recall receiving this
14 e-mail, but looking at it now, I have no idea what he's
15 referring to.

16 Q. So this may strike you as a silly question but it's not
17 intended to be one. Pavanelli was not very good at spelling,
18 right, at least in English?

19 A. Well, you know, we think people are good or bad. We're
20 all good today because we have spell check. He's obviously has
21 misspellings in his -- particularly you'll notice when he's
22 really angry the number of misspellings go up. You know, I've
23 also received plenty of e-mails from him with no misspellings.

24 Q. And one word that he seemed to have a recurring problem
25 spelling correctly is further, right?

1 A. I don't know that.

2 Q. Let's take a look at SKYE006083 also known as D-579.
3 Take a look at the first paragraph right there in the middle.
4 Do you see the word further is spelled F-U-R-T-H-U-R on the
5 third line?

6 A. Further, yeah.

7 Q. And then take a look at the last item number 7, do you
8 see further is spelled F-U-R-T-H-U-R?

9 A. I actually thought it was the right spelling but I guess
10 it's not. It's E-R.

11 Q. You see that there? And then take a look back at D-576,
12 the document with the answers without the questions. I'm
13 sorry, not that one. My mistake.

14 Take a look back at D-538.

15 A. D-538?

16 Q. Yes. This was the e-mail with the profane subject line.

17 A. Okay. I have it.

18 Q. And if you look down the last line of Pavanelli's --
19 second to last line, last comment he made there before making
20 another profane comment is, I have no furthur comment to make.
21 F-U-R-T-H-U-R. You see that, right above your e-mail.

22 A. Yes. F-U-R-T-H-E-U-R?

23 Q. No.

24 A. That's my eyes looking at this print here.

25 Q. Take a look at D-538 on page JACIR01-005.

1 MR. LUCAS: Mr. Richards, it may be easier --

2 THE WITNESS: I see that.

3 BY MR. SCHWARTZ:

4 Q. You see another spelling of further. It's typed
5 F-U-R-T-H-U-R?

6 A. Yeah. I assume that is a misspelling.

7 Q. So go back now, please, to D-579.

8 A. Okay.

9 Q. The June 18th document. So just to be clear, after you
10 received this e-mail, the sleeping dog e-mail, you were still
11 undeterred, correct?

12 A. From what?

13 Q. From proceeding with your investment thesis?

14 A. Again, this had had nothing to do with my investment
15 thesis.

16 MR. SCHWARTZ: Your Honor, this might be a good time
17 to take a break.

18 THE COURT: All right. We'll be in recess for ten
19 minutes.

20 (A recess was taken at 10:51 a.m. until 11:09 a.m.)

21 THE COURT: Mr. Schwartz, you may continue.

22 MR. SCHWARTZ: Thank you, Your Honor.

23 BY MR. SCHWARTZ:

24 Q. Mr. Richards, we're going to show you D-558.

25 THE COURTROOM DEPUTY: D-558.

1 BY MR. SCHWARTZ:

2 Q. This is a capture of the Gruppo Triad website with a
3 5/20/2004 date in the lower right-hand corner on the first
4 page. In the course of your dealings with Gruppo Triad and
5 Pavanelli in 2003 and 2004, did you ever take a look at the
6 Gruppo Triad website?

7 A. So this is a document that I definitely have seen before
8 but I'm not sure if I saw it in connection with the litigation
9 or whether I actually saw the website beforehand. I think I
10 might have seen their website.

11 Q. Let's take a look at page 2 with the bates stamp
12 LP01962. I'll direct your attention to the last paragraph such
13 as it is at the bottom of this particular exhibit. Starting
14 here on page LP1962 and we can hover here for a moment and
15 continuing on to page LP1963, you'll see that the Gruppo Triad
16 website provides an explanation of certain events.

17 Let's start at the bottom of LP1962 and you can see that
18 the Gruppo Triad website starts to talk about something that
19 occurred in London in 1998. Do you see that?

20 A. Yes.

21 Q. And then under item number 1 there's a reference to
22 \$150 million in face amount of notes having been seized by
23 Scotland Yard. Do you see that?

24 A. Yeah. I'm trying to read the whole paragraph so that I
25 understand what you're asking me about.

1 Q. All right. Do you want to read all the way to the
2 bottom of the discussion on the next page? That would be fine
3 with me. Take your time and read it.

4 A. This gets difficult to read because it's black behind
5 the print.

6 Q. Take a look up on the big screen or on your monitor.
7 It's pretty clear there.

8 A. Okay. Yeah. I can see it to the bottom of that page
9 and then it goes on from there which I'm having a little
10 trouble reading.

11 Q. We'll enlarge it for you on the next page. Probably
12 better that you read the whole thing before I start firing
13 questions at you.

14 A. Yeah. This contains some stuff I've never -- the
15 general story about this, I recall. But there's stuff in here
16 that's, you know, I don't remember.

17 Q. Is what you're reading here on the Gruppo Triad website
18 generally consistent with the spin that Pavanelli put on what
19 occurred to him in this criminal proceeding in the UK?

20 A. Some of it is and some of it is I don't recall him ever
21 saying.

22 Q. I'm not going to take you through every line of this but
23 I do have some specific questions. In the course of your
24 dealings with Pavanelli, did you ever discuss with him that
25 this conviction in London was associated with some Customs

1 incident that occurred in the United States back in 1987, the
2 same year he supposedly obtained the notes?

3 A. Never mentioned Customs incident in the United States
4 that I recall. He was open about this London case and that he
5 was going to go back and clear his name when he could and that
6 he was convicted of a conspiracy but acquitted of the false
7 instruments charge. That was kind of what he had said on more
8 than one occasion. I do remember him saying that.

9 This -- I don't remember some of this.

10 Q. Independent of whether the United States Customs was
11 involved at all, did he discuss with you that the criminal
12 proceeding in London arose out of some incident where some
13 woman was seized carrying blank notes?

14 A. I don't remember that. I remember him being arrested.
15 I don't remember the -- I don't remember that.

16 Q. Do you recall learning that, from Pavanelli or any other
17 source, that he was sentenced to four years in jail and served
18 some prison time on account of this conviction?

19 A. I don't -- the four-year term, no, I don't remember
20 that. But I remember he was in jail for some period of time.
21 I understood it to be short and then he was out.

22 Q. Let's take a look at actually the text of the last line
23 of this paragraph in the website. It says -- starts by saying,
24 James Pavanelli arranges for his own release from prison. Do
25 you see that?

1 A. This is on 1963?

2 Q. Yes, it's on 1963. The last line of this subject.

3 A. Yeah. Where it's highlighted, I see it, yes.

4 Q. The last sentence, I should say.

5 A. I see that, yes.

6 Q. And my question following up on that is did you ever
7 have any discussion with Pavanelli or anybody else about
8 Pavanelli arranging for his own release from prison?

9 A. No. I don't recall him saying that.

10 Q. To put it slightly differently, did you ever have any
11 discussion with Pavanelli or anybody else about Pavanelli
12 escaping from prison?

13 MR. ELLIOTT: Objection, Your Honor. There's no
14 foundation for that.

15 THE COURT: At this point the witness said he didn't
16 know. You can ask him if he read it on the website. If the
17 answer still is he didn't know, you'll have to use some other
18 method of proof.

19 MR. SCHWARTZ: May I be heard briefly?

20 THE COURT: Just briefly.

21 MR. SCHWARTZ: The only reason I've asked the question
22 in a somewhat blunter form is that a witness might not
23 interpret the words arranging for his own release from prison
24 as connoting an escape.

25 THE COURT: If he knows something about it, you can

1 inquire. If he doesn't, then we'll move on.

2 BY MR. SCHWARTZ:

3 Q. So simply, Mr. Richards, did you ever receive any
4 information from Pavanelli or anybody else that Pavanelli had
5 escaped from prison in the UK?

6 A. Again, we're -- okay. So this -- the answer is no.
7 That I -- again, it would be something that was --

8 THE COURT: So now I understand your position. You
9 weren't relying on this. I get that.

10 But the answer is no, so there's no foundation to go
11 forward.

12 MR. SCHWARTZ: Agreed.

13 BY MR. SCHWARTZ:

14 Q. The last question here. The next clause talks about the
15 case against Pavanelli having been left in some suspended
16 state. Was it your understanding when you were dealing with
17 Pavanelli in 2004 that this UK case was -- from 1988 or 1989
18 was still open?

19 A. He said he was going to go back and clear his name.
20 Maybe that implies that it was open.

21 Q. Okay. You can put aside D-558.

22 I'll ask you to turn to D-590.

23 THE COURTROOM DEPUTY: D-590.

24 BY MR. SCHWARTZ:

25 Q. Mr. Richards, D-590 is a document that was produced by

1 Crabbe, Brown and James in this litigation. It's an e-mail
2 from Pavanelli to quite a few people, including you,
3 drichards@netwalk.com. Do you see that?

4 A. Yes, I do.

5 Q. And it's dated Saturday, July 3rd, 2004, correct?

6 A. Yes.

7 Q. And the other addressees include Usuelli, Alcalde and
8 whoever has the e-mail address cromandelchal@hotmail.com,
9 right?

10 A. Yes.

11 Q. And surely you recall receiving this e-mail, right?

12 A. I recall the events surrounding this and but, again, if
13 you're asking me if I recall receiving a specific e-mail 13
14 years ago, the answer is no, I don't.

15 Q. And the title of this e-mail is urgent message to all,
16 right?

17 A. That's what it says.

18 Q. And then in the first paragraph, as I discussed with
19 Mr. Alcalde with you in the courtroom, there's an invitation
20 list of various people who are to come to Como, correct?

21 A. Yes.

22 Q. And then a statement that no one else is acceptable,
23 right?

24 A. Yes.

25 Q. And then if you move down a few paragraphs, there's a

1 paragraph that starts with Mr. Luis Alcalde. Do you see that?

2 A. Yes.

3 Q. And the next sentence reads, quote, Mr. David Richards
4 has nothing to do aswell, Infact I gave him instruction not to
5 talk with Mr. Bonetti, Mr. Richards went against my will and my
6 instruction, this is a very serious problem, and has generated
7 this mess. I may have to take some sanctions about the
8 creation of this problem.

9 Do you see that?

10 A. I see that's what it says. It's rather amusing, but
11 it's what it says.

12 Q. What is it that you find amusing?

13 A. That he told me not to do something, not to talk to
14 Bonetti, like I would have to listen to what he said.

15 Q. What is it that you had done that drew his ire?

16 A. Listen, this is -- first off, I don't know what draws
17 the guy's ire. Like I told you in the deposition, the guy, by
18 this time, was impossible and it could be anything, right? So
19 you know that I did go talk to Bonetti, or Luis and I went and
20 talked to Bonetti and Manfredi.

21 So he's saying that he gave me instructions not to talk
22 to Bonetti which is not -- I doubt it's true and it wouldn't
23 have mattered what he told me what to do. So but if -- this is
24 very vintage Pavanelli at this time. Kind of why Crabbe, Brown
25 quit. The guy was just impossible.

1 Q. And did you understand that whatever misgivings
2 Pavanelli had with you in early July 2004 that had something to
3 do with your interactions with Bonetti in Caracas back in
4 June 2004?

5 A. It wasn't in July. It was on this particular day
6 because no doubt it was different the next day when he calmed
7 down. So I assume -- I don't know what he -- again, I don't
8 know what he's talking about here. But that's the -- the only
9 action I ever had with Bonetti that I recall is when I met
10 with -- Luis and I met with him at the end of June.

11 Q. And remind us, what did you discuss with Bonetti at the
12 end of June that appears to have caused such consternation with
13 Pavanelli?

14 A. I don't know. I don't know what caused such
15 consternation.

16 Q. What did you talk to Bonetti about?

17 A. I went through this in direct, what we talked to him
18 about. And so the thing that I'm thinking about right now is
19 that we learned about this issue between Pavanelli and Bonetti
20 about their entitlement to some interest in the notes if they
21 were paid.

22 Q. The 25.11 percent, right?

23 A. Yeah. Well, again, I don't recall that specific
24 percentage. I think you're probably right. But the -- so
25 among the things that we learned when we were -- that Luis

1 learned and related to me, again, it was all in Spanish, was
2 that. That there was this dispute. And there was a proposal
3 or resolution of this dispute which seemed reasonable to me and
4 so I -- actually we were sort of the force behind causing this
5 meeting to take place.

6 Q. Incidentally you accept, do you not, that Woodstrite has
7 a 25.11 percent lien on this litigation; is that right?

8 A. I don't know. I mean, there was a -- in the AG decision
9 there was a recognition of interest. So if that's the law of
10 the decision, I recognize it. So I would -- whether the
11 Attorney General says it's 25 percent, 25 percent of what,
12 under what conditions, I don't know. But if they have a
13 legitimate legal interest, yes, I would accept that.

14 Q. Have you had any negotiations with Bonetti, Manfredi,
15 Woodstrite or their counsel since you filed this lawsuit?

16 A. Well, they don't talk English, so I haven't. Their
17 attorney had conversations with Luis, I believe, in connection
18 with their intervention but I don't know what those were.
19 Their attempted intervention in the case.

20 Q. Have you reached any form of agreement, oral, written,
21 handshake, formal or otherwise, with Bonetti, Manfredi or
22 Woodstrite concerning that 25.11 percent lien?

23 A. No.

24 Q. All right. Let's keep going with D-590. In the next
25 paragraph Pavanelli says, furthurmore -- you'll notice again

1 misspelling further -- insofar we have not received from any of
2 the group concern the famous, quote, dictame, end quote, dated
3 October 3, 2003.

4 And then he goes on to say something about a Mr. Santana
5 having a copy of, quote, the document, which appear to be
6 false, or not quite right, according to Bonetti.

7 Do you see that?

8 A. I see that he says that, yes, in this e-mail or letter.

9 Q. Do you have any understanding of what he was referring
10 to there?

11 A. Again, this is just another example of him being
12 impossible, wrong, saying stuff that's just not true. That's
13 the way he was by this time.

14 Q. And none of that --

15 A. Obviously he had the *dictamen* so, you know, that's
16 nonsense.

17 Q. And none of that stopped you from proceeding to do
18 business with Pavanelli, correct?

19 A. I wasn't doing business with Pavanelli. I was trying to
20 get a deal and escape Pavanelli as best I could. So the
21 strategy was to get the notes in my hand and then push him out
22 of the deal. That was my strategy. And I executed that
23 strategy successfully.

24 Q. We'll talk about that later.

25 In any event, despite this admonition that neither you

1 nor Alcalde should travel to Como, you dispatched Alcalde to go
2 there just the same, right?

3 A. That is not true. I don't know what he's talking about
4 here. We were setting up the meeting. So this is crazy. He's
5 just ranting here. I don't know why, but he is.

6 Q. All right. We'll change subjects here. I want to show
7 you D-527. We'll need to get you the hard copy so just hang on
8 one second, please.

9 THE COURTROOM DEPUTY: D-527.

10 BY MR. SCHWARTZ:

11 Q. Like a bad penny, Mr. Richards, Larry Corna re-emerges
12 here on April 16, 2004, an e-mail you sent to him. Do you see
13 this?

14 A. Okay. So, again, when you have these comments I note
15 that you like to say about like a bad penny. I'm not agreeing
16 with that if I answer your question.

17 Q. Let me rephrase the question. Is D-527 an e-mail that
18 you sent to Larry Corna on April 16th of 2004?

19 A. It appears so, yes.

20 Q. And I want to focus not so much on your dealings with
21 Larry Corna, which we've covered sufficiently, at least for the
22 time being, but the last -- second paragraph of this e-mail.

23 You wrote to Larry Corna, quote, as you know, I have
24 been appoint the exclusive US rep for Gruppo re funding
25 matters. Since you have decided to not work with me, anything

1 you are doing with James needs to be finished up, end quote.

2 Do you see that?

3 A. Yes.

4 Q. So when were you appointed the exclusive United States
5 representative for Gruppo Triad in funding matters?

6 A. I think I was the exclusive guy for him in the US from
7 November on. Appointed might be -- appoint might be -- I don't
8 know exactly the right word, but I was the only guy giving him
9 money that I knew of.

10 Q. Are you saying November of 2003 you became the exclusive
11 US rep for Gruppo Triad?

12 A. I said -- I just said that I wouldn't categorize as
13 being the exclusive US rep. I misspoke here. I was the only
14 guy giving him money. And at this point I'm trying to get rid
15 of Larry Corna, right? So, you know, there you have it.

16 Q. So you're saying you misspoke in this e-mail to Larry
17 Corna when you said you had been appointed the US -- the
18 exclusive US rep for Gruppo Triad?

19 A. Well, appoint, I don't know. That might be the wrong
20 word. But I was the only guy giving him money. If there is an
21 appointment, I don't recall it. If there's a document. There
22 may be. But I was the only guy giving him money. And, again,
23 the purpose of this was to try to get rid of Larry Corna.

24 Q. So you were trying to elbow Larry Corna out of the
25 picture here, right?

1 A. Listen, I was trying -- Larry was this -- so you have to
2 understand something. In this time frame this is April of
3 the -- the middle of April. We were trying to make a deal with
4 Pavanelli at this point. He had agreed to a certain kind of
5 deal. And this is when -- the April 8th time frame. Larry was
6 a distraction. So we were trying to, I don't know if elbow him
7 out was the right way because he kept coming back. But we just
8 didn't want him involved.

9 Q. So what you told him here just wasn't true, right?

10 A. Well, you know, you could argue with the language,
11 right? So the language was inartful, I would say. I would say
12 I was the exclusive guy giving him money. Was I the US rep at
13 that time? I might have proposed to him that I would go raise
14 money to him. I just, you know, I don't remember.

15 Q. Let's look at D-553.

16 THE COURTROOM DEPUTY: D-553.

17 BY MR. SCHWARTZ:

18 Q. Mr. Richards, now we're in April 2004. We have an
19 e-mail from you from your netwalk.com account to Larry Corna
20 dated May 18, 2004. Do you see that?

21 A. Yes.

22 Q. This is an e-mail you sent Mr. Corna on that day,
23 correct?

24 A. Yes.

25 Q. And you attached various types of documents, right?

1 A. Yes.

2 Q. And one of them has the file name Bandagro notes one
3 page intro.pdf and there's another file name fax for purchase
4 of notes.pdf, and a third file name invitation to bid for
5 Bandagro notes.pdf, right?

6 A. Yes.

7 Q. So let's look at the next page of the document. The one
8 with the bates stamp at the bottom 3166.

9 A. Okay.

10 Q. This is one of the files you attached to the e-mail,
11 right?

12 A. Yes.

13 Q. If you look at the first paragraph of this document that
14 you had in circulation in May 2004, you wrote that Skye
15 Ventures is currently offering for sale, interests in certain
16 Venezuelan promissory notes, issued by Bandagro, right?

17 A. Yes.

18 Q. And then you went on to say those notes were currently
19 owned by Gruppo Triad, right?

20 A. Yes.

21 Q. And then in the bold paragraph two below that you
22 identified the notes that you were offering for sale, right?

23 A. I think I was reading in the wrong place there. Where
24 exactly are we right now? Oh, in the Gruppo Triad attachment.

25 Q. Third paragraph.

1 A. Yeah.

2 Q. The bates stamp page ending in 03166. Are we on the
3 same page?

4 A. Yes.

5 Q. And there's the bold language in the third paragraph,
6 right?

7 A. Yes.

8 Q. And there, you identified the notes that you were trying
9 to sell?

10 A. Yes.

11 Q. And those purported notes were identified as Series 322,
12 Caroni, numbers 2/6 to 5/6, each in denomination of 25 million,
13 right?

14 A. Yes.

15 Q. And those happen to be two of the purported notes that
16 were inspected by Carlos Delgado Morean for the Ministry of
17 Finance in Switzerland, right?

18 A. I'll take your word for it. I don't know whether they
19 were but I'll take your word for it.

20 Q. Then you provide a little history in the next paragraph
21 including a reference to the existence of counterfeit Bandagro
22 notes, right?

23 A. I list the rationale for the fact that the bonds had not
24 previously been honored. There were a number of reasons there.
25 That was one of them.

1 Q. And then in the paragraph beneath that one you note in
2 the last sentence in the last clause characterizing the
3 Attorney General opinion that that ruling had failed to dictate
4 a precise date by which the notes must be paid. Right?

5 A. I'm sorry?

6 Q. Second to last paragraph on the page.

7 A. Yes.

8 Q. Last clause. You're referring to the October 2003
9 Attorney General opinion and you go on to say that that ruling
10 failed to dictate a precise date by which the notes must be
11 paid. Right?

12 A. Yes. I said that, among other things.

13 Q. That's another way of saying there was no payment order,
14 right?

15 A. I beg your pardon?

16 Q. That's another way of saying there had been no payment
17 order, right?

18 A. There was an order to pay them, to process payment, by
19 the Attorney General so that's not another way of saying it.
20 There was no date that payment had to be made by.

21 Q. And the Ministry of Finance had not issued a payment
22 order, correct?

23 A. I don't know if such a thing even existed. So if there
24 was such a thing, I had not seen it.

25 Q. In fact, you've never seen a payment order from the

1 Ministry of Finance on any of these purported Gruppo Triad
2 notes, correct?

3 A. What I've seen is the Attorney General ordering them to
4 be paid. So, yes.

5 Q. Let's look at the next paragraph. Here again you make
6 an assertion in the first sentence that Gruppo Triad FFC has
7 retained Skye Ventures as its exclusive representative in North
8 America to assist Gruppo in raising sufficient funds to cover
9 all outstanding and potential costs necessary to enact the
10 final stages of its efforts, expected to culminate in
11 Venezuela's payment of these notes. Right?

12 A. Yes.

13 Q. Then you went on to say that could take 6 to 36 months,
14 right?

15 A. I said Gruppo believes.

16 Q. Now, you prepared this Bandagro promissory note sheet
17 here with the expectation that this or something like it would
18 be distributed to potential investors, right?

19 A. So, as looking at this, I recall for a short period of
20 time that this, in fact, did exist. Like one of the -- after
21 we got back from Switzerland or from Como, one of the things
22 that we were thinking about doing, again, given our belief that
23 the Attorney General decision was final and binding, well heck,
24 if that's right and other people would -- other people might
25 reach the same conclusion, maybe the way to attack this deal is

1 to simply sell some notes and take an advisory fee. So that
2 was one of the ways that we were thinking about doing it.

3 So here you have sort of a draft of something that we
4 might have used to do it. I don't know if we ever sent this to
5 anybody or not, and this effort to sell notes for them was
6 abandoned shortly after this, I think.

7 Q. This one-page Bandagro promissory note sheet, this
8 wasn't prepared for the purpose of elbowing Larry Corna out of
9 the picture, right?

10 A. No, it wasn't.

11 Q. This was meant for potential investors who hadn't yet
12 had exposure to Gruppo Triad or Bandagro or these purported
13 notes, correct?

14 A. Well, again, I don't remember what it was intended for.
15 But the clear intent here would have been to use this or
16 something like this in the event that we had someone who was
17 interested purchasing the bonds.

18 Q. Now, when you said, Gruppo Triad FFC has retained Skye
19 Ventures as its exclusive representative in North America, had
20 Pavanelli or Schianchi or anybody else executed some form of
21 written agreement appointing you to that role?

22 A. I don't remember if there was a written agreement or
23 not.

24 Q. Well, your counsel can show that to you on redirect if
25 it exists or they choose. Let's look at the next page.

1 A. Like I said, this effort was abandoned shortly after
2 this and later on, we resumed that with respect to a single
3 note.

4 Q. Let me ask you this question. As of May 18th, 2004, was
5 it true that Gruppo Triad FFC had retained Skye Ventures as its
6 exclusive representative in North America?

7 A. I think our discussion was that if I could sell a note
8 for him, he wanted money, right, so that I could go do that and
9 I might have said, well don't let anybody else do it. And in
10 this particular instance I recall working for a short period of
11 time on this with this fellow who was involved in the initial
12 diligence, Gary Post.

13 Q. I'm not asking you to speculate on what might have
14 happened. I'm asking you whether this is true.

15 A. Well, if I said it, they'd asked me to do it, it's true.

16 Q. But when you said it in the previous exhibit, D-527, you
17 testified it really wasn't true?

18 A. Well, I said I was confused. This reminds me that I
19 was -- we were doing this. Again, it was a short period of
20 time. It was one of the ways we were trying to achieve a
21 liquidity event and it looks like it happened.

22 Q. Did it become true sometime --

23 A. Incidentally, I said I did it. I didn't say -- I wasn't
24 sure that was the right language. Well, you're right, it was.

25 Q. Did something happen between April 16th, 2004, the date

1 of D-527, and May 18th, 2004, the date of D-553, that resulted
2 in you having been retained as Gruppo Triad's exclusive North
3 American representative?

4 A. I don't know.

5 Q. Let's look at the next page of D-553. This is some
6 confidential fax that's got your stamped signature on it. It's
7 obviously a form meant to be sent to a recipient or recipients
8 to be filled in. Is that a fair description of that page?

9 A. It could have been, yeah. I don't know if it was the
10 final version or if it was ever sent. But that appears to be
11 the purpose.

12 Q. Well it's obviously not the final version but it's not
13 sent to anybody, right?

14 A. Correct. I don't know that it ever was.

15 Q. All right. In this, let's call it draft, in the second
16 sentence you wrote, we own about 1 Billion Dollars of these
17 notes, correct?

18 A. Yeah. The royal we I guess, if that's what you're
19 referring to.

20 Q. Well, I'm asking who you were referring to.

21 A. Yeah. We. Again, inartful. And I don't know if this
22 was the final draft. We own 1 billion. I obviously didn't own
23 1 billion-dollar notes but Gruppo did.

24 Q. You didn't own any, right?

25 A. That's right. We must have been referring to the --

1 this would have been referring to the investor we have control
2 of or we own. It's not correct.

3 Q. So the royal --

4 A. Again, I don't know if this was ever sent out to
5 anybody.

6 Q. When this was drafted and your stamped signature was put
7 on it, the royal we you had in mind was you and Gruppo Triad,
8 right?

9 A. Probably Gruppo Triad. And my, as I say in there that
10 we're the -- I say in the attachment that the owner/seller is
11 Gruppo Triad and that I was the agent assisting. So that's, I
12 think, pretty clearly what it would have been referring to.
13 And, again, I don't know whether this was ever sent to anybody.

14 Q. Let's turn to the next page, 3168 at the bottom. You
15 have that one?

16 A. There's no stamp on this.

17 Q. There should be a bates stamp in the lower right-hand
18 corner.

19 A. This one there's not.

20 Q. Kind of a double entendre, the lower right-hand corner
21 03168.

22 A. Yeah. This one doesn't have that but it looks like the
23 same document.

24 Q. That's puzzling. Maybe we should take a look at this
25 exhibit.

1 THE COURT: Actually, mine doesn't have it either.

2 MR. SCHWARTZ: All right. That's doubly puzzling.

3 Hold on just a second, please.

4 THE COURT: I don't think any of this series has
5 numbering in the lower right-hand number. You do have it
6 identified as Exhibit 75. I'm sorry, Exhibit 553.

7 MR. SCHWARTZ: Yes. And the version I'm looking at
8 starts at 03165 and looks a lot like the one that's up on the
9 screen here but it may be that there's some confusion. Just
10 bear with us.

11 THE COURT: The only difference is the bates numbers
12 are not on the bottom.

13 MR. SCHWARTZ: Why don't we continue with that
14 understanding and we'll straighten this out as need be later.

15 BY MR. SCHWARTZ:

16 Q. I'm asking you now to turn to the fourth page of this
17 exhibit, Mr. Richards.

18 A. They're not numbered. If you could put it up on the
19 screen, I can see which one you're referring to.

20 Q. It's the second to last page of the document.

21 A. It says terms for purchase at the top?

22 Q. Yes.

23 A. Yeah. Sure. Got it.

24 Q. And there again, under terms and conditions, the seller
25 is identified as Gruppo Triad (through Skye Ventures its

1 exclusive North American representative). Right?

2 A. Yes. That's what it says.

3 Q. I'm sorry. What did you say?

4 A. Yes. That's what it says.

5 Q. Okay. You can put 553 aside.

6 A. Okay.

7 Q. We'll proceed to D-847.

8 THE COURTROOM DEPUTY: D-847.

9 BY MR. SCHWARTZ:

10 Q. Mr. Richards, let's take a look at D-847. As you'll see
11 it, there are certain similarities to D-553.

12 A. Yes.

13 Q. But it's not identical. So first we have a form of the
14 confidential fax. This one actually has an addressee, correct?

15 A. Yes.

16 Q. And that's your stamped signature there, faint as it may
17 be, on this document, right?

18 A. Yes.

19 Q. Who is Mohamid El-Erian?

20 A. I don't remember.

21 Q. Suzanne Richards, any relation?

22 A. I don't think so, no.

23 Q. So you sent this confidential fax to Mr. El-Erian,
24 correct?

25 A. It was -- certainly looks like it was sent to him.

1 There's no fax logos on the top or bottom but obviously this
2 document existed.

3 Q. And if you look at the text of the first paragraph like
4 we saw in the preceding exhibit it has an assertion by you,
5 quote, we own about 1 Billion Dollars of these notes, period
6 end quote. Right?

7 A. Yes. But, again, we say that later in the document the
8 seller is Gruppo Triad.

9 Q. So you were representing to Mohamid El-Erian that you,
10 Skye Ventures, owned about \$1 billion of the notes, right?

11 A. I think we already went over this and my answer is the
12 same. In this same document we say the seller is Gruppo Triad
13 through Skye Ventures, its exclusive North American
14 representative. So I think that's what I was saying.

15 Q. Attached to the fax cover sheet is a one-page overview
16 of Bandagro promissory notes, right?

17 A. Yes.

18 Q. And this is a little different than what we saw in
19 D-553. So let's take a look at this sheet that appears to have
20 evolved at some point. So I'm looking at the page, at least
21 mine has a bates stamp, CORNA07249, the second page of the
22 document. Does yours?

23 A. Yes.

24 Q. And then there's a series of indented bullet points
25 starting about a third of the way down the document. Do you

1 see that?

2 A. Yes.

3 Q. Point number 2 says, during that investigation,
4 referring to the Guzman Cova investigation, duly appointed
5 Venezuelan Officials visited Switzerland to examine the notes
6 and officially authenticated the Gruppo Triad Bandagro notes as
7 genuine.

8 Do you see that?

9 A. Yes.

10 Q. Is that your understanding of what happened?

11 A. I think so, right?

12 Q. And the person who -- who were the duly-appointed
13 Venezuelan officials, plural, who performed that function?

14 A. The two officials were Hepsie Hurtado who authenticated
15 the notes in this particular case and Roman Delgado who
16 authenticated the notes in Switzerland.

17 Q. And that's your understanding that these two people went
18 there and --

19 A. It is today.

20 Q. Okay.

21 A. I just generically referred to them as officials back
22 then. I don't know if I knew who they were then. Probably did
23 not.

24 Q. I'm sorry?

25 A. Probably did not.

1 Q. And in this document, if you turn to the next page,
2 there's a description here of, in the last paragraph, Gruppo
3 Triad's plans going forward, right?

4 A. Yes.

5 Q. And you wrote here in the second sentence that plans
6 included analysis of, preparation of and potential filing of
7 lawsuits in Switzerland, Venezuela and the United States.
8 Right?

9 A. Yes.

10 Q. And you indicated further that Gruppo is in the process
11 of retaining an investment banker and a public relations firm,
12 right?

13 A. Yes.

14 Q. And when you said that, you really meant you were in the
15 process of hiring a public relations firm, right?

16 A. Oh, no. They were doing the same stuff. I certainly
17 wasn't thinking about an action in Venezuela or even in
18 Switzerland.

19 Q. I'm asking you about the action of hiring a public
20 relations firm. That was your initiative, right?

21 A. I hired a public relations firm but I believe Gruppo was
22 trying to hire one, too.

23 Q. Gruppo had no money, right?

24 A. And, again, in my particular case, this top PR firm did
25 it on the basis of an interest in the notes. So money probably

1 was not required.

2 Q. To the best of your knowledge, did Gruppo Triad ever
3 engage a public relations firm?

4 A. I don't think they did.

5 Q. The only party who engaged the public relations firm was
6 you, right?

7 A. Yeah. I had the lawsuit and I retained Sitrick.

8 Q. Let's move to D-603.

9 THE COURTROOM DEPUTY: D-603.

10 BY MR. SCHWARTZ:

11 Q. Mr. Richards, we're looking at D-603.

12 A. Yes.

13 Q. Do you recognize this document?

14 A. It appears to be -- this looks like it might be an
15 update from myself, although my signature is not on here, to my
16 investor group.

17 Q. And to try to put this one in some type of chronological
18 frame of reference, let's look at the second page of the
19 document. And the end of the first paragraph. Do you see the
20 last sentence says, our lawsuit will be filed Friday August 20?

21 A. Yes.

22 Q. So it's safe to assume this document was created prior
23 to that date?

24 A. Yes.

25 Q. Now let's look back at the first page. We have a

1 picture of you displaying one of the notes proudly, right?

2 A. Boy, I look young there.

3 Q. Huh?

4 A. Boy, I look young there.

5 Q. And then lower down, Mr. Alcalde is pouring over them
6 carefully, right?

7 A. He's looking at them.

8 Q. You didn't have those notes in your hands until
9 August 18th of 2004, right?

10 A. I think that's the date.

11 Q. So if you take the information on the second page
12 together with the pictures on the first, it seems reasonably
13 likely, this document was created on August 18th or 19th,
14 right?

15 A. I'm not going to argue with you over a day or two either
16 way. That's the time frame.

17 Q. The first thing you say -- I want to point your
18 attention to you make reference in the first paragraph to Jacir
19 being a former Supreme Court Justice, right? See that in the
20 middle of that paragraph?

21 A. Yes.

22 Q. That's not quite true, is it?

23 A. Ended up I have that wrong. He was a Magistrate at the
24 Supreme Court.

25 Q. Looking in the next paragraph right next to -- about

1 halfway up the picture of you with the note there's a sentence
2 that says, those of you who have followed this closely know
3 that the man who runs Gruppo Triad can be a difficult and
4 unreasonable man. It's now unnecessary to be concerned about
5 the process of obtaining reimbursement through Swiss legal
6 channels or the risk that any issues between Skye and Gruppo
7 could delay or reduce payment.

8 Do you see that?

9 A. Hold on a second. You're yellowing it there.

10 Q. That may make it easier for you.

11 A. Yes. I do say that.

12 Q. This is a reflection of the culmination of one part of
13 your game plan and namely resting physical control of at least
14 two of the purported notes from Pavanelli, right?

15 A. Well, our plan, of course, the first part of the plan of
16 this side of the plan, that is the deal side, or one of the
17 parts was to actually possess the bearer instruments. So we
18 had accomplished that.

19 Q. Let's look at the next page again. And you have a
20 section in the middle there, efforts to raise \$25 million to be
21 resumed.

22 A. Yes. We had abandoned that and we, as I think we've
23 discussed, we, after this lawsuit was filed, we got an
24 actual -- wasn't at this time but shortly after, we got another
25 note that we were trying to place on behalf of Gruppo Triad.

1 Q. Let me ask you to look at the sentence, the third
2 sentence of this section. It reads, quote, before we start
3 these efforts, Skye will be in the possession of a copy of the
4 Attorney General's opinion from a third party source. You see
5 that?

6 A. Yes.

7 Q. What's that all about?

8 A. So I think what we were trying to do -- I don't remember
9 exactly. I can assume or guess, but --

10 Q. Generally not a good idea in a trial.

11 A. Again, this relates to stuff that was going to occur in
12 the future.

13 THE COURT: Just to be clear, don't guess.

14 THE WITNESS: All right. This hadn't occurred yet.
15 So we're talking about stuff that might occur in the future.

16 BY MR. SCHWARTZ:

17 Q. I'm a little puzzled by this. I thought long before
18 August 18th or 19th of 2004 that you and Alcalde had received a
19 copy of the Attorney General's opinion and studied it intently
20 in consultation with experts in two countries and concluded
21 that it was final and binding?

22 A. Of course. I think you heard Luis testify to that.

23 Q. So why is it that you were discussing here on
24 August 18th or 19th saying that before you start these -- renew
25 these financing efforts, you will be in the possession of a

1 copy of the Attorney General's opinion from a third-party
2 source. What does that mean?

3 A. I don't know. They may have been trying to get a
4 version directly from the Attorney General. I don't know.

5 Q. Was that important?

6 A. I can't imagine it was, but we were going to do it and
7 our counsel, I think, was attempting to have direct discussions
8 with the Attorney General.

9 Q. Who's the third-party source?

10 A. I don't know. Maybe it was the Attorney General. I
11 don't know. Again, this refers to something that was going to
12 occur with respect to an effort after the lawsuit.

13 Q. Exactly. I'm trying to find out why was it necessary
14 for something else to occur?

15 A. Necessary for what?

16 Q. For you resuming your financing efforts.

17 A. It doesn't say it was necessary. It said we will do
18 this.

19 Q. It said, before you start these efforts.

20 A. Yeah. It says that in the future we will do this before
21 we start these efforts to place this extra note. It had
22 nothing to do with the lawsuit.

23 Q. Why did you need to have another copy of the Attorney
24 General's opinion before you could start financing?

25 A. I don't know. I've said that.

1 Q. All right. Let's take a look at the next section. It
2 reads, financial public relations firm engaged.

3 A. Yes.

4 Q. This was another part of your strategy, right?

5 A. Engaging a -- to be clear, part of the strategy of one
6 of the four or five ways we could be paid was -- so to put this
7 in context, right, one of the things that I was pretty good at
8 doing in deals, generally, and this was kind of along the veins
9 is we would typically -- you might put X dollars in a risk deal
10 and then there would be an interim transaction where you would
11 attempt, as soon as possible, to get X dollars back out and
12 then you would ride the risk of the venture on the remaining
13 deal having had your capital returned.

14 I've done that many times and that's a good strategy in
15 a risky deal. If you can get your capital back and preserve
16 some of the upside, that's a good thing to do. And I may have
17 talked to my group or members of my group about that strategy
18 here.

19 So there were several ways that that could be
20 accomplished. One of them was selling a bond for Gruppo and
21 getting all of our money back in that process. Second was an
22 early settlement. So if you believe in the investment thesis
23 that we had, that is the Attorney General's decision was final
24 and binding, and recall that in our opinion in July she
25 reaffirmed her opinion.

1 I know you might disagree with that but we felt like,
2 look, we have a certain amount in the notes. We could settle
3 this for far less than face value, make it attractive to
4 Venezuela and it would still be a very good deal for us. So
5 why don't we try to put some pressure on them to face up to
6 their own laws? Again, if our thesis is right that the
7 Attorney General's decision is final and binding and they know
8 that and now that they know they're up against a firm in the US
9 that has the wherewithal to complete it, that might lead to an
10 early resolution and a really good result for the investment
11 group.

12 So that was part of my strategy. This was preached to
13 me by Sitrick who had similar experiences in the past of doing
14 things like this. So it was definitely one part of our
15 strategy.

16 Q. So let's see how you describe that strategy here on this
17 communication. First you said, we feel that our chances of an
18 early settlement of our litigation will be enhanced if
19 Venezuela's failure to make payment on its legitimate financial
20 obligations is publicized in the financial press. Right?

21 A. Yes. That's what we thought.

22 Q. Then you went on to say, since Venezuela regularly
23 accesses US capital markets for billions of dollars, negative
24 publicity will likely make placement of debt more difficult and
25 interest rates higher, costing Venezuela millions and millions

1 of dollars and making placement of the debt more difficult.
2 Right?

3 A. The point here was that with a large, very large
4 sovereign debt, I think at the time it was in the nature of
5 something between 25 billion and 30 billion, a point of
6 interest difference because there was more risk would more than
7 settle this case. So it would be easier for them to face up to
8 this obligation than delay it for 13 years.

9 Q. So in other words, you thought that if you filed this
10 litigation and hired a high-powered public relations firm to
11 publicize it, you could create a risk of interference with a
12 foreign sovereign government's access to financial markets?

13 MR. ELLIOTT: Objection.

14 THE COURT: I'm going to sustain the objection. I
15 think where we're going here is somewhat obvious. People
16 oftentimes use different techniques as long as they're legal to
17 try to settle lawsuits. That should be no surprise, right?

18 More importantly, we're right up to twelve o'clock. At
19 this point we're going to take a lunch break and see you back
20 here at 1:10.

21 MR. SCHWARTZ: Thank you, Your Honor.

22 (A recess was taken at 12:02 p.m.)
23
24
25

Thursday Afternoon Session

February 4, 2016

1:10 p.m.

- - -

THE COURT: Mr. Schwartz, you may continue.

MR. SCHWARTZ: Thank you very much, Your Honor.

BY MR. SCHWARTZ:

Q. Mr. Richards, do you still have D-603 in the vicinity?

A. I do.

Q. Before we leave -- thank you. Before we leave this document, I just want to confirm this is a document you created, correct?

A. So -- I was looking at it. I read it fully in the break, which you were asking me about specific questions. So I would say definitely this is something that I prepared. Whether this was the final one or the results of at least one sent, I'm not sure. You know, I say that, finally, we become the owner and possessor of the notes. So in terms of the time frame, it was after this August 18 date that you were talking about.

But then later on I say, Skye -- I say in one section Skye will file a lawsuit, and then Skye has filed a lawsuit. I think probably some of that, you know, might have been fleshed before this thing became final. But this was the news to the investor group, that, hey, we finally have these notes. We are

1 the clear owner of these notes. We don't have a deal with
2 Pavanelli's BS anymore. Let's go.

3 Q. And without getting too specific about exactly when it
4 was created, it looks to you like something that was created
5 approximately toward the end of August, 2004; is that fair?

6 A. Yes, we have the notes, right. We didn't get the notes
7 until, I think we said, August 17 or August 18, something like
8 that.

9 Q. All right. I'm going to show you now D-608. I'm not
10 going to ask a lot of questions about this document.

11 THE DEPUTY CLERK: D-608.

12 BY MR. SCHWARTZ:

13 Q. I'm going to help you navigate your way through this one
14 because the way in which it came out of the computer is a
15 little bit choppy. So let's just look at the last page of the
16 document, please. So I would ask you to turn to the last page
17 with the Bates stamp ending in 346.

18 A. Okay, I was kind of trying to read it here.

19 Q. You should feel free to read it to whatever extent you
20 think is necessary, but I'm not going to have questions about
21 the substance of this right now.

22 A. Okay.

23 Q. I'm going to try to establish what it is.

24 A. Okay.

25 Q. If you look at the last page, there's your name and

1 contact information. Right?

2 A. That's -- Yeah, that's my -- That's one of the
3 businesses I was running at the time.

4 Q. And then turning back to the page with the Bates stamp
5 344, are you there?

6 A. Yes.

7 Q. And then about 20 percent of the way down the page,
8 there's your name and e-mail address, and then the word
9 "draft," right?

10 A. Yes.

11 Q. And there's a headline of sorts, "Skye Ventures has
12 retained Mike Sitrick, quote, Wizard of Spin, as public
13 relations counsel," right?

14 A. Yeah. There was a book out about him at the time, and
15 it was called that. That was the quotation, "The Wizard of
16 Spin."

17 Q. And then there's --

18 A. But it says -- you're right. I'm sorry. To answer your
19 question, it says, yes, it says "draft," and it does have my
20 e-mail address there.

21 Q. And there's a couple of pages of biographical
22 information on Mr. Sitrick, right?

23 A. Hold on a second. Just let me see if that's true. It
24 certainly starts out that way. There are some quotes from
25 Sitrick here. It sounds very much like Mike.

1 Q. And, again, I am not going to ask you about them, but
2 feel free to read them.

3 A. Mike has said that Venezuela -- if Venezuela does not
4 pay a valid obligation that their own Attorney General says
5 must be paid, when that failure to pay is made well known in
6 the correct way, he does not believe it will be possible for
7 Venezuela to access the markets in any reasonable way.

8 So, yeah, I mean this sounds like I'm talking about
9 Sitrick here or -- it's a draft of what we might say about
10 Sitrick.

11 Q. Again, I'm not particularly interested at the moment in
12 the text.

13 If you look at the first page carrying over to the
14 second page, this is where it gets a little choppy in terms of
15 presentation. You will see there appears to be an e-mail
16 exchange between you and Larry Corna on September 3, 2004,
17 right?

18 A. Can you refer me to that date, September 4?

19 Q. September 3, and I may have misspoken, but if you look
20 at -- there's also a September 4, I will show you that in a
21 second -- but if you look at the absolute bottom of the first
22 page of the document there is a sent: Friday, September 3,
23 2004, 8:32 in the morning. And I appreciate your attention to
24 the detail here, but as you will see, I'm not going to be
25 grilling you on any aspect --

1 A. Well, this is weird because the top date is March 28 --
2 oh, 2015.

3 Q. That's why I'm trying to help you.

4 A. I got you. I got confused.

5 Q. Don't even bother with that yet.

6 A. Okay.

7 Q. You see that there is an e-mail from Corna to you that
8 carries over onto the second page. And then your name is
9 there. It appears there was some communication between you and
10 Mr. Corna to which this Sitrick biographical information is
11 attached.

12 A. Yes, I see. So it's -- I thought I knew the question
13 you were asking. You are saying this is an e-mail from -- It
14 starts -- But this is an e-mail on September 3 from Larry to
15 me.

16 Q. And then you can see in the middle of the first page, it
17 looks like you wrote, "Larry, I will talk to you next week
18 sometime," and it says September 4, 12:07 a.m.

19 A. Yes.

20 Q. Then disregard everything above that because that was
21 the way the document was produced in the litigation. All I am
22 trying to establish here with you is that you had some exchange
23 with Mr. Corna by e-mail in the September 3rd to 4th time
24 frame, and this is Sitrick biographical information that was
25 appended to one or more of those e-mails; is that fair?

1 A. Yeah, I think that was kind of the time frame that we
2 were finally engaging Sitrick, and we did ultimately announce
3 that. Why I would send it to Larry, I don't recall; but it
4 looks like he's back around for some reason.

5 Q. That's all we need to talk about with this document
6 right now.

7 Let's move to D-631.

8 THE DEPUTY CLERK: D-631.

9 BY MR. SCHWARTZ:

10 Q. Here's an easier document to read. It's one page,
11 Mr. Richards. It has your electronic signature in the lower
12 right-hand corner. Also apparently signed, it appears
13 electronically, by Mr. Post. Do you recognize this as your
14 document with your electronic signature on it?

15 A. Yes.

16 Q. And this document starts out by saying, Ambient Advisors
17 -- That's Mr. Post's group, right?

18 A. Yes.

19 Q. -- and Skye Ventures are pleased to introduce ourselves
20 to the distressed debt community with a highly interesting
21 project. Do you see that?

22 A. Yes.

23 Q. And then looking at the first sentence of the next
24 paragraph, it says, "We are acting as a principal, agent and
25 advisor with respect to 1.075 billion face value of notes

1 issued by a Venezuelan agricultural bank with the full faith
2 and credit of the Venezuelan government." Do you see that?

3 A. You read that correctly.

4 Q. This is some type of document, an announcement, an
5 introduction -- however you characterize it -- that you and
6 Mr. Post prepared to be distributed to potential investors. Is
7 that correct?

8 A. This was done for a specific purpose. And so it was
9 done -- Gary and I attended a distressed debt conference, I
10 think it was, November of 2004. And we were taking -- We had
11 this right to sell this \$50 million note, that you know is
12 9/12, and so in this context we were distributing this to the
13 group of distressed debt investors, a lot of them Gary knew, at
14 this conference. That's the context in which this was written.

15 Q. Where was the conference?

16 A. I forget. I think some place out west.

17 Q. When you said, "We are acting as a principal, agent and
18 advisor with respect to 1.075 billion face value of notes," you
19 were referring to the purported Gruppo Triad notes, right?

20 A. Well, so you are -- We were principal in the sense that
21 we owned notes. We were agents in the sense we were trying to
22 sell the \$50 million note. And we were advisors, I guess, on
23 how to sell it.

24 Q. And you didn't limit this reference to \$50 million,
25 right? You said you were principal, agent and advisor with

1 respect to the entire collection of Gruppo Triad purported
2 notes totalling 1.075 billion, right?

3 A. Again, if you look at it, we say that we own 100, we are
4 offering 50, and the owner -- there's an owner of over 900. So
5 we clarified that sentence of what we meant, I think, to just
6 what I said.

7 Q. I say what you are saying now. You go on to say at the
8 end of the paragraph and say that you are the agent for the
9 owner of the remaining 900 million. That's Gruppo Triad,
10 correct?

11 A. We are offering the 50 million as the agent of that
12 owner, right? We are selling it for him. We didn't claim that
13 we owned the \$50 million note. We were an agent. We knew that
14 we owned 100 million of the notes, which we did.

15 Again, this was November of 2004, you know, after the
16 lawsuit was filed just before Venezuela answered.

17 Q. All right. You could put that one aside.

18 A. And, again --I just wanted to say that, again, this was
19 part of this effort to figure out some way where we could have
20 an interim liquidity event and take a part of the risk without
21 having capital at any longer at risk. So that's what we were
22 trying to do there.

23 Q. I have one more document to show you in this series,
24 D-649.

25 A. This, incidentally, so you know -- oh, I think we talked

1 about this in my deposition. This was part of a larger
2 document. So we had it at the deposition where it was kind of
3 a glossy piece that had been printed up -- You might remember
4 -- and it has Andy Douglas's picture in there. This was part
5 of it.

6 Q. Thank you for the clarification. I don't recall, but we
7 will be moving into evidence later in the case various portions
8 of your two depositions and will see if what you just said has
9 any impact on that. But thank you for pointing that out.

10 All right. Let's look at D-649. Do you have that?

11 A. I do.

12 Q. We will start this at the top instead of the bottom.
13 And this is an e-mail from you to Mr. Sitrick and Mr. Post,
14 correct?

15 A. Yeah, to Sitrick, Post, Vogel, Knight and Mullens.

16 Q. All right. I'm just going to direct your attention to
17 the bottom of the first page of this document. Do you see
18 there's a line that says, "Questions likely to be posed by a
19 journalist"?

20 A. I see that, yes.

21 Q. And then the balance of this document appears to be a
22 series of such questions and your proposed answers, correct?

23 A. I don't know that to be true. It looks like -- I'm just
24 starting at the top here, right? It starts that -- It starts
25 with a comment about that Venezuela -- kind of like the notices

1 that we have talked about already that I think Vogel had found.
2 And then we tell him what we knew at the time that, yes, there
3 were frauds that were recognized by the Attorney General, but
4 that's why we didn't buy them absent of the Attorney General
5 making the ruling that she did. And so --

6 Q. Again, I am happy to have you read as much as you want,
7 but I'm only interested in what's on the second page. And if
8 your counsel thinks it's advantageous to talk about the first
9 page, they can redirect you to it. I don't mind you're
10 familiarizing yourself with this, but I don't have questions on
11 the first page.

12 A. Well, why don't you ask your question, and I will see if
13 I need to go back and get the context of it.

14 Q. That's perfectly fine.

15 At the bottom of the first page there's a heading that
16 says, "Questions likely to be posed by journalists." Do you
17 see that?

18 A. Yes.

19 Q. It appears to me -- and you can tell me if I have this
20 correct -- there are a series of questions posed by someone and
21 a series of answers or proposed answers provided by someone
22 else. And I don't want to put words in your mouth, but I'm
23 inferring someone is asking the questions, and you're providing
24 the answers. Is that correct?

25 A. Well, normally what would occur is that, you know, if

1 you are going to prepare to talk to reporters, these people,
2 all of whom work for Sitrick, I'm pretty sure -- I know Vogel
3 did. I am almost certain Knight did. I'm pretty sure that
4 Kelly Mullens did, worked for Sitrick. Normally, the way it
5 would work is they would come up with the sort of approach and
6 then questions and answers. Now normally they would have the
7 questions they expected and what they expected answers to be.

8 So here you can see I'm sending this back to them, and
9 I might have -- I might have either put these answers in,
10 modified answers that were already there. This is a little
11 closer in time. It's, you know, March of 2005. The lawsuit
12 was underway at that point. So it's a little closer in time.
13 But I still really don't specifically remember this e-mail.

14 Q. When you sent this e-mail back, whether you modified
15 someone's answers or created them yourself in the first
16 instance, these answers reflected your positions as of the time
17 of this e-mail, right?

18 A. I'd have to know which positions you are referring to
19 and say, yes, that's right, or, no, that's wrong, or there
20 might have been further drafts of this. So I can't make that
21 blanket statement without reading each of these positions.

22 My position at the time was the Attorney General's
23 position -- opinion was final and binding. So I think that was
24 our position. Right?

25 Q. I understand --

1 A. So if there was anything inconsistent with that, I would
2 say, no, it wasn't my opinion at the time.

3 Q. All right. I'm not really trying to trip you up here.
4 Let's turn to the second page.

5 A. Okay.

6 Q. I'm going to count down questions from the top. I get
7 to the sixth question, and it starts with, "Who were the
8 original buyers?" Do you see that?

9 A. Yeah.

10 Q. So the question here was, "Who were the original buyers
11 of the Bandagro notes (that is the types of buyers)"? Right?
12 Do you see that question?

13 A. I do.

14 Q. And the answer that appears on this page of D-649,
15 "Don't know, don't care." Do you see that?

16 A. Yes.

17 Q. Was that your position at the time you sent this e-mail?

18 A. Well, between the time that notes were issued in '81 and
19 when they went to Pavanelli, we didn't know who were the
20 original purchasers, and we didn't care.

21 Q. Let's look --

22 A. That was something, you know, we never really tried to
23 find out, and it didn't matter.

24 Q. Let's look at the last question on this page. It says,
25 "How much did Skye pay for the notes (that is how many pennies

1 on the dollars)?" Do you see that?

2 A. Yes.

3 Q. And then the answer on the following page is, "This is
4 private information. However, in cash notes and assumption of
5 obligation, Skye paid more than 50 cents on the dollar." Do
6 you see that?

7 A. Yes.

8 Q. That wasn't true, correct?

9 A. Well, sure it was.

10 Q. What obligation did Skye assume?

11 A. The -- So we assumed the obligation to get the lawyers,
12 30 cents on the dollar, engage Sitrick, five or ten cents on
13 the dollar, for exactly what was bought, pay cash, get my time
14 for however long it took. We valued that at more than 50 cents
15 on the dollar.

16 Q. Your deal with Sitrick provides that Sitrick only gets
17 paid if you win?

18 A. Correct.

19 Q. Your deal with Pavanelli, however many times it morphed
20 over time, it provides that you only had to pay Gruppo Triad if
21 you win, right?

22 A. Correct.

23 Q. That's why you called that promissory note a nonrecourse
24 promissory note, right?

25 A. Yes.

1 Q. You don't owe Pavanelli and you don't owe Sitrick and
2 you don't owe the lawyers a penny if you lose, right?

3 A. That's right. I point out that in the Weltover Bond
4 case, also that Dart paid a few cents on the dollar. So it
5 wouldn't be unusual to pay a few cents on the dollar.

6 Now did we ever -- Was this the final thing? No. I
7 don't know. So our position was consistently with the press
8 and even in this case, that it didn't matter what we paid.
9 These are bearer notes, and they're valid. And if we paid a
10 dollar ten, ten or nothing for them, they were valid or not.

11 Q. All right. Let's change subjects again. When did you
12 first get a copy of the Attorney General's October 3, 2003,
13 opinion?

14 A. I believe it was in October of 2003.

15 Q. Who did you get that copy from?

16 A. I don't recall, as I said.

17 Q. All right. Let's take a look at the interrogatory
18 answers that you signed very early in the case. These are
19 D-701.

20 THE DEPUTY CLERK: D-701.

21 BY MR. SCHWARTZ:

22 Q. At least on the copy of the document that I have,
23 Mr. Richards, there were some very faint numbers in the center
24 of the bottom of each page. I think the one up on the screen
25 also has it. As long as you can see those numbers, and they're

1 actually on your copy, you can turn to page 9.

2 A. Okay.

3 Q. And if you'll look at the second-to-the-last paragraph
4 on this page -- well, you can read the questions and the
5 objections and any other part of this that you want, there is a
6 fairly simple foundational matter here -- if you look at the
7 second-to-the-last paragraph, you will see that these
8 interrogatory answers state, "In mid to late October of 2003,
9 David Richards was given a copy of the October 3, 2003, opinion
10 by either Larry Corna or Siro Schianchi." Right?

11 A. Yep.

12 Q. And you signed these interrogatory answers?

13 A. I think that's right.

14 Q. And I'm not suggesting that was inconsistent with your
15 answer a moment ago. I just wanted to refresh your
16 recollection.

17 A. Okay.

18 Q. So does D-701 refresh your recollection as to when and
19 from whom you received a copy of the October 3, 2003, opinion?

20 A. Yeah, I was -- I said kind of a date range, and it was
21 either Larry Corna or Siro Schianchi. And I still think that.
22 I don't have a strong recollection, but that's what I think.
23 That's the best of my recollection.

24 Q. We have talked now for a moment about Corna, Siro
25 Schianchi, Gruppo Triad's Swiss lawyer -- and you pointed out a

1 Notary as well?

2 A. Yes. It's possible I got it from them both.

3 Q. We're going to take a look back here at a document that
4 we looked at before, D-590. It wasn't that long ago that we
5 had looked at it so you may have it in the pile.

6 A. I have got quite a stack here.

7 Q. Would you like us to sort through it for you?

8 This is the July 3 e-mail from Pavanelli in anticipation of
9 the Como --

10 A. I see that.

11 Q. And I just want to focus on something we did look at
12 before, but I want to look at again with you. So if you look
13 in the body of the first page of this document, at the
14 paragraph that begins with the misspelled "Furthurmore," do you
15 see that?

16 A. Yes.

17 Q. And as we've seen before, Pavanelli wrote, "Insofar we
18 have not received from any of the group concern the famous
19 dictame dated October 3, 2003, nine months has gone by and we
20 are still waiting for such document." Right?

21 A. Yeah, we discussed this.

22 Q. There will be some other questions on this. I know we
23 did. I wanted to remind you of this.

24 And there was some discussion here about Santana,
25 Umberto Santana, identified above as the false copy of the

1 document according to Pavanelli or something that's not right.
2 That's what he said?

3 A. As we discussed earlier, which I said was likely
4 nonsense.

5 Q. All right. Now I want you to look back at a document we
6 also looked at a moment ago, D-603. It was the last document
7 we looked at before lunch and the first document we looked at
8 after lunch. I'm looking for my own copy.

9 A. This is the draft or potential communication to my
10 investor group.

11 Q. Yes.

12 A. Yes, I got it.

13 Q. And we looked at this before so I'm not going to dwell
14 on it extensively here, but this is the document on the second
15 page where you said before you resume your efforts to raise \$25
16 million, you will be in possession of a copy of the Attorney
17 General's opinion from a third party source. Right?

18 A. That's what it says there. We talked about that.

19 Q. Right. And we have also established D-603 was created
20 sometime in late August of 2004, right?

21 A. It appears that it was after I received the notes and
22 owned them. And, again, it says, we are filing a lawsuit or we
23 have filed a lawsuit. So it's -- You know, the beginning is
24 after we received and owned the notes. As to whether it was
25 the end of August or -- I don't know if you really care about

1 the specific date.

2 Q. I don't.

3 A. Okay. All right.

4 Q. As long as we are in general agreement.

5 A. Yes, generally, that's true.

6 Q. At that time the Attorney General's October 3, 2003,
7 opinion was not publicly available, correct?

8 A. I don't know. I mean it was in the press all over the
9 place. It was a big uproar. She was defending her opinion to
10 reporters. I don't know that to be true. I think it was in
11 the press. I think it was publicly available.

12 Q. I'm not talking about whether there had been any type of
13 leaks to the press or you could read a newspaper article about
14 it. I'm talking about the actual opinion itself was not
15 publicly available?

16 A. Well, I think that's untrue. Jacir went and got it and
17 filed it in a Notary. I don't think that's true.

18 Q. You couldn't go to a website and find the Attorney
19 General's opinion, correct?

20 A. I don't know that.

21 Q. You couldn't use LexisNexis to access the Attorney
22 General's opinion, correct?

23 A. I don't know yes or no to that question. I don't know
24 if anybody tried to do that or anybody -- We had it directly
25 from the Attorney General.

1 Q. That's what you understood.

2 A. Correct.

3 Q. That came from sources as to whom and which you don't
4 have firsthand knowledge, correct?

5 A. I didn't go to the Attorney General's place myself and
6 get the opinion, no.

7 Q. And -- not being -- Well, I'll do it this way. You
8 don't know whether you could have walked into the AG's office
9 from the street and asked for a copy, right? You personally?

10 A. Me personally, I don't know if I would be able to do
11 that.

12 Q. And if the opinion had been publicly available, you
13 wouldn't really need to have obtained it from a so-called
14 third-party source, right?

15 A. Well, again, I say here, you know -- You're taking this,
16 again, out of context -- I say in other places something that
17 sort of talks more about this opinion. But I think here we're
18 talking about some third-party source. Maybe it was herself.
19 I don't know. I have told you I don't know what we were
20 referring to there. But this was in regard to the placement
21 efforts that were going to take place after the lawsuit was
22 filed.

23 Q. And you've told us and Mr. Alcalde told us you had some
24 version of it that you were able to read as early as October of
25 2003, right?

1 A. End of October of -- I saw something that appeared to be
2 this. I didn't, you know, read it page for page. But I saw
3 something that was the dictamen toward the end of -- October of
4 2003.

5 Q. And here we are many months later in August, 2004, you
6 have either -- just either about to file a lawsuit or you just
7 filed it; and for some reason the one -- the copy you got the
8 preceding year is not good enough, right?

9 A. The real one, you'd think you could get one that was
10 really nice and had it in color and all of that. And so in
11 terms of showing it to these investors who might purchase the
12 note in the fall, maybe Gary had asked for it. But I think
13 what we are looking for is like one of these colorful --

14 Q. Colorful --

15 A. Looked better than a lousy copy, if you will, even with
16 the stamps on it and not colored. It would look better to me.

17 Q. Now you testified yesterday when -- that when the
18 complaint was filed on August 23, '04, you made a strategic
19 decision not to attach a copy of the Attorney General's
20 decision to the complaint, right?

21 A. I didn't.

22 Q. Alcalde did, correct?

23 MR. ELLIOTT: Your Honor, now we're approaching into
24 areas of attorney/client privilege and work product. What
25 Mr. Alcalde discussed with Mr. Richards about what would be

1 attached --

2 THE COURT: Well, let's see if we can kind of winnow
3 this down. The conversations are out. The facts about receipt
4 are certainly in play. So if you can limit it to that second
5 issue, I think we can make this problem solvable.

6 MR. ELLIOTT: Thank you, Your Honor.

7 MR. SCHWARTZ: I think I can fashion a practical
8 solution. I'm not looking to invade the attorney/client
9 privilege. Let me put people at ease.

10 THE COURT: Right.

11 MR. SCHWARTZ: I'm looking at the transcript of
12 yesterday's testimony. And Mr. Richards testified -- This was
13 the rough transcript, but I believe it's consistent with what
14 happened -- he said -- this is page 123, line 17 -- "Well, we
15 had filed the complaint. It was Luis' idea that he should not
16 attach the Attorney General's opinion --"

17 MR. C. COOPER: Your Honor, one moment. Is this
18 proper to be reciting testimony from yesterday?

19 THE COURT: Not with the witness here. You're making
20 an argument to me based on that.

21 But as I understand it -- I am not sure where this is
22 going, but I'm going to leave this to you for now -- you are
23 trying to establish when the witness actually had a physical
24 copy of the Attorney General's opinion. Is that where you're
25 going?

1 MR. SCHWARTZ: Well, their --

2 THE COURT: Just in general, where are you headed with
3 this?

4 MR. SCHWARTZ: There are very serious issues in the
5 case as to the legitimacy of the means by which various
6 versions of the Attorney General opinion were obtained.

7 THE COURT: I get that. And then avoid the
8 attorney/client issue, and that's certainly an area that you
9 can pursue.

10 BY MR. SCHWARTZ:

11 Q. I will do it this way.

12 As far as you are aware, when the complaint was filed on
13 August 23, 2004, a copy of the Attorney General's opinion was
14 not attached, right?

15 A. That's what I recall -- and you're the lawyer so you
16 would know the pleadings better than I -- but that's what I
17 recall.

18 Q. All right. Let's mark D-613.

19 THE COURT: Well, let me, just for my edification --
20 I'm the trier of fact after all -- so you each have used a copy
21 of the Attorney General's opinion. At this point should I
22 assume it's going to be disputed as to which one? Are they the
23 same, I guess is the first question? And if not, I assume
24 we're going to hear some testimony on this.

25 MR. SCHWARTZ: Would you like me to elaborate?

1 THE COURT: Just briefly. If I need to be worried
2 about authenticity, I want to flag that in my mind.

3 MR. SCHWARTZ: There is most certainly an issue of
4 authenticity concerning the version or a version of the
5 Attorney General that the plaintiff displayed either with
6 Mr. Alcalde or Mr. Richards. I can't recall which. The days
7 are flowing together. But I remember standing up in an
8 agitated manner and saying, we have an issue with the
9 authenticity of this. You might not expect that as to the
10 document --

11 THE COURT: But there are competing versions is what
12 your position is? Mr. Cooper.

13 MR. C. COOPER: I'm not aware of competing versions of
14 the report. What I believe what Mr. Schwartz is referring to
15 is, perhaps, certifications. But the content of the Attorney
16 General's -- I don't believe there is a dispute about the
17 versions.

18 THE COURT: Is that true, about the content?

19 MR. SCHWARTZ: This is not about the content.

20 THE COURT: So it's about what you're calling the
21 certification. Enlighten me what you mean by that exactly.

22 MR. C. COOPER: So there are -- Apparently, in
23 Venezuela to get a document certified, they, on the back of
24 each page, they put a stamp and a signature. And I believe
25 Mr. Schwartz is contending there are some certifications on the

1 back of some copies that are different than copies that have
2 other certifications.

3 MR. SCHWARTZ: This is part of a much larger issue.
4 Mr. Cooper is right, by the way.

5 THE COURT: We'll start with that, that the -- in
6 terms of the physical content of the document, it's the back of
7 the page certification that's first disputed.

8 MR. SCHWARTZ: A witness has testified that a
9 certification that the plaintiff is relying on is fraudulent.

10 THE COURT: All right. So the document is not in
11 dispute. The certification, you're saying, your contention is
12 it's fraudulent?

13 MR. SCHWARTZ: At least that certification, yes.

14 THE COURT: All right.

15 MR. SCHWARTZ: That's what the person who signed it
16 has testified.

17 THE COURT: All right. Then, again, what we started
18 with was just the attorney/client privilege. That is a subject
19 you may inquire.

20 MR. SCHWARTZ: I think I'm beyond the privilege
21 because I just asked what the complaint looked like. It
22 doesn't matter what the thinking was behind it really. And the
23 testimony from yesterday will stand regardless.

24 All okay. I am going to move on from there.

25 THE COURT: All right.

1 MR. SCHWARTZ: There is more to this issue, but I
2 don't think we need to get into it right this second.

3 BY MR. SCHWARTZ:

4 Q. Okay. So, Mr. Richards, I'm going to show you D-613.

5 THE DEPUTY CLERK: D-613.

6 MR. SCHWARTZ: And, Your Honor, with the next, apropos
7 to what we just discussed, on account of the issue regarding
8 authenticity of certifications, the next series of exhibits I'm
9 showing you I'm most definitely not introducing for the truth
10 of anything asserted in there, starting with D-613.

11 BY MR. SCHWARTZ:

12 Q. So, Mr. Richards, do you have D-613?

13 A. Yes.

14 Q. All right. First of all, you'll recognize that this is
15 an e-mail that was produced by your counsel in the case as
16 reflected in the Skye Bates numbers, right?

17 A. Yes.

18 Q. And this one has got a translation because it was
19 originally sent in Italian.

20 A. Okay, yeah.

21 Q. But I'm going to have you focus on the English
22 translation.

23 A. All right.

24 Q. So this is an e-mail that Siro Schianchi sent you on
25 October 6, 2004, right?

1 A. That's what the title says.

2 Q. And cc'd Usuelli, right?

3 A. Yes.

4 Q. And you received this e-mail, correct?

5 A. I don't recall it, but, again, it's like the standard:
6 I'm not denying I received it, but I don't recall it. And
7 since it was in Italian, no, I certainly didn't read it.

8 Q. We'll see other documents in a second in English. But
9 let's stick with the translation of this Italian document from
10 Schianchi.

11 So to put this in chronological context, October 6,
12 2004, is five or six weeks after the lawsuit was filed, right?

13 A. It sounds about right.

14 Q. And Schianchi starts by saying, "I can hereby confirm
15 the following to you." Right?

16 A. So this is a translation. Was this translation done
17 back then or done in the case?

18 Q. Well, the translation you're looking at was done during
19 the case.

20 A. Okay.

21 Q. If you obtained a translation of it contemporaneously
22 with its transmittal, I don't know.

23 A. Okay.

24 Q. But I do know that you have a translation here, and I'd
25 like to ask you about it.

1 So Schianchi starts by saying, "I can hereby confirm
2 the following to you." Right?

3 A. Yes.

4 Q. And then we have four bullets?

5 A. Yes.

6 Q. The first states, on October 9, 2003, Pavanelli asked
7 the Ministry of Finance for a certified copy of the Attorney
8 General's October 3 opinion, right?

9 A. That's what the translation of this e-mail, which I
10 don't -- you know, couldn't have read at the time says, yes.

11 Q. By the way, the translation is not disputed. So I
12 wouldn't --

13 A. But I mean I couldn't read the e-mail back then. I
14 don't know if I ever read it. So that's my point.

15 THE COURT: Wait a minute. Is there an objection?

16 MR. ELLIOTT: Your Honor, if he doesn't remember -- He
17 saw it in Italian, doesn't remember the contents. I assume
18 where we are going with this is whether he recalls
19 independently these subject matters, as opposed to reading the
20 e-mail.

21 THE COURT: Well, this was also produced by Skye,
22 though. Does that change anything?

23 MR. SCHWARTZ: I am going to make this much easier for
24 everybody. I think I can accommodate the objection and find a
25 different way to accomplish the same purpose here. Can we

1 stipulate that the Italian version of this e-mail of October 6,
2 2004, was sent by Schianchi and received by Richards? If we
3 can, I can dispense with this document for now.

4 THE COURT: Mr. Elliott?

5 MR. ELLIOTT: Yes, Your Honor. My issue is not so
6 much with the documents since it's one of our exhibits as well.
7 My only issue was trying to read the document to Mr. Richards
8 who never saw it before.

9 MR. SCHWARTZ: I appreciate that.

10 THE COURT: I think we have got the problem solved.

11 MR. SCHWARTZ: Again, we are not admitting this for
12 any purpose for having to do with the truth. But the fact it
13 was sent and received is stipulated, I don't need to ask any
14 further questions about this, at least not at the moment.

15 THE COURT: All right.

16 BY MR. SCHWARTZ:

17 Q. So let's go to D-618. We're going to have a similar
18 issue here. This is going to be a document that presents
19 exactly the same issue.

20 THE DEPUTY CLERK: D-618.

21 BY MR. SCHWARTZ:

22 Q. All right. So, Mr. Richards, here we have another
23 e-mail in Italian from Schianchi to you. This is dated the
24 next day, October 7, 2004. Do you recall receiving this?

25 A. No.

1 Q. All right.

2 MR. SCHWARTZ: Can we have the same stipulation on
3 this one, Mr. Elliott, and dispense with further questioning of
4 it? Regarding it, I should say?

5 MR. ELLIOTT: I'm sorry, what are you asking?

6 MR. SCHWARTZ: I am proposing that rather than work
7 with that English translation of an Italian document that may
8 not have been translated at the time the witness received it,
9 we stipulate with this document, like the predecessor, it was
10 sent and received. That's it.

11 MR. ELLIOTT: I have no problem with that.

12 THE COURT: Very good. Thank you.

13 MR. SCHWARTZ: Again, not for the truth. Okay.

14 BY MR. SCHWARTZ:

15 Q. All right. I now arrive at a document in English,
16 D-621.

17 THE DEPUTY CLERK: D-621.

18 BY MR. SCHWARTZ:

19 Q. Okay, Mr. Richards. Here we have a letter from
20 Schianchi to you dated October 12, 2004, within the same week,
21 give or take, as the last two exhibits. This one has a Skye
22 Bates stamp so it was produced by your counsel. It's written
23 in English, which will make it easier for us to talk about. Do
24 you recognize this as a copy of a letter you received from
25 Schianchi on or about October 12, 2004?

1 A. I would say that I have no recollection of this, but
2 this is certainly a fax or -- it looks like a fax probably to
3 me addressed -- sent by Siro Schianchi. Again, I don't
4 remember it, but it certainly looks like that's what it is.

5 Q. Now you will see here, Schianchi includes four bullet
6 points, right?

7 A. Yes.

8 Q. First he says -- just like in the translation I started
9 to read you of the Italian document -- on October 9, 2003,
10 Pavanelli -- I'm skipping some words -- requested from the
11 Ministry of Finance an original copy of the dictamen issued on
12 October 3, 2003, by the Attorney General. Right?

13 A. That's what it says.

14 Q. And then in the next bullet -- I'll paraphrase just a
15 bit -- he says, on October 15, 2003, Oscar Guzman Cova at the
16 Ministry of Finance certified page by page a copy of the
17 Attorney General's opinion. Do you see that?

18 A. Yes, that's -- I think that's what it said. I wasn't
19 following you word for word. I am assuming you're reading it
20 correctly.

21 Q. Well, paraphrasing it a little bit. But, in essence,
22 he's saying -- asserting, I should say, on October 15, 2003,
23 Guzman Cova certified a copy of Marisol Plaza's opinion, right?

24 A. That's what he says.

25 Q. And Schianchi is very specific here in giving you the

1 date that Pavanelli supposedly made this request and Guzman
2 supposedly took this action, right?

3 A. He has dates in there, yes.

4 Q. Then he has got another bullet. And he says, the above
5 said copy has been given to me by hand by Mr. Roman Delgado in
6 representation of the Ministry of Finance of the Venezuelan
7 Republic as in conformity of the previous communications sent
8 to me from the Venezuelan Embassy in Bern, Switzerland. Do you
9 see that?

10 A. I see that. I think you read that correctly.

11 Q. And he, unlike the prior two bullets, he doesn't tell
12 you when Delgado supposedly did this, right?

13 A. That's right. There's no date in that bullet point.

14 Q. Then the last bullet, he says he's holding this as a
15 fiduciary, right?

16 A. That's what he says.

17 Q. Now --

18 A. He refers, incidentally in the -- I don't know if you
19 read the whole thing, and I'm trying to understand this in my
20 own head as I'm reading this -- in this letter the text reads
21 that as in conformity of the previous communications sent to me
22 from the Venezuelan Embassy in Bern, Switzerland.

23 So it sounds as if he had received something before
24 that, and this thing that Roman Delgado gave to him was the
25 same. That's kind of how I read that.

1 Q. You can hold that interpretation for yourself. I don't
2 mean any disrespect --

3 A. It could be wrong. That is what it means to me. That
4 is what it looks like to me. I'm looking at this the first
5 time in forever.

6 Q. So he starts this letter to you by saying, upon your
7 request, he's confirming the following. Do you see that?

8 A. Yes.

9 Q. Had you made a request of Schianchi in or about October,
10 2004, that he confirmed that he was in possession of a
11 certified copy of the opinion of the Attorney General?

12 A. Perhaps. I don't recall doing so. Or I don't recall
13 whether I did it on my own or if I did at the request of
14 Mr. Alcalde. But, again, I just don't recall.

15 Q. So you have no recollection of an effort being made
16 after the litigation was filed, after this litigation was filed
17 by you or on your behalf, to obtain a copy of the Attorney
18 General's opinion certified by the Ministry of Finance?

19 A. I might not have been asking for a copy here. I might
20 have asked him what happened, if I did ask him anything.
21 Again, I just don't recall.

22 Q. Okay.

23 A. And it might have been that the lawyers were asking for
24 some clarification. I just simply don't recall.

25 Q. All right. Let's move to D-624.

1 MR. SCHWARTZ: Again, Your Honor, not being offered
2 for the truth by any stretch of the imagination.

3 THE DEPUTY CLERK: D-624.

4 THE WITNESS: Yes.

5 MR. SCHWARTZ: Hold on for one second.

6 THE WITNESS: I have it.

7 BY MR. SCHWARTZ:

8 Q. All right. So here we have the first document that Skye
9 Ventures produced in this litigation, SKYE00001, now
10 Defendant's Exhibit 624. It's a cover letter from Schianchi,
11 it's dated October 20, 2004, and it addressed to Mr. Gerace of
12 Skye Ventures?

13 A. Gerace, yes.

14 Q. Do you recognize this document?

15 A. Well, it's a -- it could be a letter. I don't see a fax
16 at the top. It looks like it's another letter from Schianchi.
17 Again, it could be a letter, could be a fax. So that's what it
18 appears to be. I don't recall this document.

19 Q. Turn to the second page of this document, please.

20 A. Okay.

21 Q. Do you see this includes a declaration from Schianchi?

22 A. Yes.

23 Q. And we don't have to go over this word by word, but, in
24 essence, it's the same four bullet points that are in
25 Defendant's Exhibit 621, right?

1 A. It appears to be.

2 Q. He just took the letter, D-621, and he turned it into a
3 declaration for some reason, right?

4 A. Kind of looking at the first word and last word in each
5 of the bullet points, it looks like the same.

6 Q. Now let me ask you this question. Look at the third
7 bullet. Schianchi asserts that at some point, unspecified, a
8 copy, supposedly certified by Guzman Cova, had been given to
9 Schianchi by hand by Roman Delgado in representation of the
10 Ministry of Finance, right?

11 A. Yes.

12 Q. To the best of your knowledge, at any point on or after
13 October 15, 2003, was Roman Delgado employed by or performing
14 any official functions for the Venezuelan Ministry of Finance?

15 A. I don't know.

16 Q. You can put D-624 away.

17 THE COURT: For my future benefit, each of these pages
18 has its seal on it. Is that what we were talking about a
19 moment ago? I think you had mentioned it was on the back of
20 the page that we're interested in.

21 MR. SCHWARTZ: You will see in Guzman Cova's
22 deposition that he testifies that these certifications are
23 fraudulent.

24 THE COURT: What I am asking is just a very practical
25 question, on the front of each page or on the back? There are

1 stamps on each page, on the face of each page.

2 MR. SCHWARTZ: It's the back.

3 THE COURT: But we -- In other words, it's not copied
4 here?

5 MR. SCHWARTZ: You raise a good question here because
6 of the un-authenticity -- and I don't want to have an argument
7 with Mr. Cooper about this now -- I don't want to make
8 representations about fronts and backs. It's not atypical in
9 some circumstances for the stamps to go on the back.

10 THE COURT: I am just trying to tee up what I should
11 be looking for. I'm not going to -- I need testimony to
12 resolve this. But these stamps are not what I am looking for?

13 MR. SCHWARTZ: I think the issue here is that -- and
14 this is part of a much larger issue -- but the issue with
15 regard to the specific document is Guzman Cova at his
16 deposition said that this certification is fraudulent. The
17 text is inconsistent with reality, as he understood it. And
18 this could turn into a long discussion. It's best taken up, I
19 suggest, in the context of his deposition, but Mr. Cooper may
20 have a different view.

21 MR. C. COOPER: I was going to answer your direct
22 question. The round things are the seals, and the stamp is the
23 language on the back. And you're correct, Your Honor, the
24 language on the stamp that is on the back of each page it
25 appears is sequential.

1 THE COURT: Right now we don't have that in the copy
2 that I have in front of me.

3 MR. C. COOPER: Yes.

4 THE COURT: Very good. Thank you.

5 MR. SCHWARTZ: We are foreshadowing an issue which
6 will require some discussion later.

7 MR. C. COOPER: Your Honor, I guess I should complete
8 my response to you. To my knowledge, in this case the defense
9 has not produced two-sided copies of any documents. The
10 production has always been sequential pages even for documents
11 that are in fact two-sided.

12 THE COURT: All right. This is why I'm confused.
13 This is just all a practical question. Don't read anything
14 into this. These were two-sided document at the time they were
15 issued. So the stamps could be on the back but the second page
16 of two pages.

17 MR. C. COOPER: Yes, that's what I wanted to make sure
18 that the Court was clear.

19 THE COURT: There are blank backsides.

20 MR. SCHWARTZ: With this particular document, I don't
21 want to be making any particular representations because it's a
22 controversial subject --

23 THE COURT: Right. I'm just -- There is going to be a
24 dispute about whether the seals are valid, and I'm just asking:
25 Where are they? That's all I'm asking for right now. And

1 they're all over the documents on the front and back is what
2 you're telling me.

3 MR. C. COOPER: The seals, Your Honor, I don't think
4 there's going to be much of a dispute. The stamp language it
5 certifies is the point of contention.

6 THE COURT: All right.

7 MR. C. COOPER: But you're right. You won't see it on
8 the back of the page. You'll see, as the next page, which just
9 has the language, "This hereby certifies," and then goes on
10 with the text.

11 MR. SCHWARTZ: Whatever might have happened at the
12 source of the certification is not necessarily the way the
13 document got carried through the places it was later sent. And
14 there will be chain-of-custody type issues.

15 THE COURT: All right.

16 MR. SCHWARTZ: There will be other issues in this case
17 like this where the seals and certifications need to be
18 examined very closely.

19 THE COURT: All right.

20 BY MR. SCHWARTZ:

21 Q. But that won't be the case on D-482. So let's take a
22 look at that one, Mr. Richards. This is a document we looked
23 at yesterday, but I'm going to show a segment of it we didn't
24 look at.

25 THE DEPUTY CLERK: D-482.

1 THE WITNESS: This is the Pavanelli/Corna \$1,000
2 dispute.

3 BY MR. SCHWARTZ:

4 Q. Well, if it is, that comes up in many documents, but
5 that's not really what I have in mind here.

6 A. Okay.

7 Q. I think it was more like a \$5,000 dispute. But either
8 way, I have no intention of asking you about that right now.

9 You have D-482?

10 A. I do.

11 Q. So just to put this in context, this is an e-mail from
12 Usuelli to you from January 6, 2004, and then your response at
13 the top, correct?

14 A. Yes, I think that's what we discussed yesterday.

15 Q. All right.

16 A. Again, remembering I forget if I said I actually saw it
17 then or if I was recovering from my shoulder surgery then.

18 Q. It's on Skye Ventures Bates stamp. You don't have any
19 reason to doubt that this is a document that your lawyers
20 produced representing an e-mail exchange between you and
21 Usuelli --

22 A. No, that's not what I'm saying. I'm saying I don't know
23 when I saw it.

24 Q. That's okay.

25 Let's look at the last page of the document. I want

1 to focus on the part we didn't look at yesterday. So there's a
2 heading no. 3, Legal Opinion, right?

3 A. Yep.

4 Q. And then you'll see a break after some paragraphs and a
5 sentence that begins, "My question is what might produce a
6 lawsuit in the United States -- or the U.S." Do you see that?

7 A. Yes.

8 Q. And then Usuelli raises some questions about what might
9 happen in a U.S. court in the next paragraph. And the third
10 paragraph says, "I was considering that a U.S. entity could
11 start it with a single note and I could file in Switzerland on
12 another one." Do you see that?

13 A. Yes, I see that's in the middle. He says that, yes.

14 Q. And the next paragraph he says, "This would not
15 prejudice Gruppo Triad's negotiations since the lawsuits are
16 brought by third unrelated, paren, formally, end paren,
17 parties." Do you see that?

18 A. Yes.

19 Q. Did you understand that in January, 2004, Usuelli was
20 proposing or suggesting that there be some effort underway to
21 have some formally unrelated party, unrelated to Gruppo Triad,
22 bring a lawsuit in the United States?

23 A. Well, I don't know if I would characterize it exactly as
24 you say. You can see he is kind of rambling through all sorts
25 of things here. But what you read is accurately his words,

1 yes.

2 Q. That's all I have for D-482.

3 I would like you to look now at Joint Exhibit 35,
4 J-35. We may need to give you that one. There is going to be
5 one that's difficult to read. The print is clear, but it's
6 tiny. We may want to enlarge portions of this for you on the
7 screen.

8 THE DEPUTY CLERK: Joint J-35.

9 MR. SCHWARTZ: Actually, since yesterday we took
10 precautions here. Let me just explain what has happened here.
11 So this is Joint 35. The copy that I've handed or had handed
12 to Mr. Richards includes an enlargement of the text at the back
13 of this document so it will be easier to read because
14 otherwise, it's going to cause eye strain. So I don't -- Do we
15 have another copy for plaintiff's counsel with the enlargement?
16

17 MR. ELLIOTT: We can see it. Thank you.

18 BY MR. SCHWARTZ:

19 Q. I will represent to you, Mr. Richards, and to co-counsel
20 and the Court that what we tried to do here was take the minute
21 text of J-35 and just enlarge it by 20 percent, or something
22 like that, so you can read it without too much trouble. And
23 feel free to check the original against the enlargement any
24 time you would like, but I'm going to direct you to the larger
25 one so it's easier for you to read. Is that all making sense?

1 A. Yes.

2 Q. All right. So before we start looking at the larger
3 one, though, I want to establish this document was produced by
4 Skye Ventures. Do you see that?

5 A. Yes.

6 Q. It's an exchange of e-mail between Pavanelli and you
7 from February 5, 2004, right?

8 A. Yes.

9 Q. All right. Now let's turn to the version you can
10 actually read.

11 A. Okay.

12 Q. So first there's some discussion in Pavanelli's e-mail
13 to you -- I'm working from back to front -- of some meeting
14 with Delgado people in the second paragraph. Do you see that?

15 A. I was trying to quickly glance through the response to
16 put it into context, if you don't mind.

17 Q. Take your time. Why don't you read as much of this as
18 you would want.

19 A. Okay. I read the exchange.

20 Q. Let's start with Pavanelli's e-mail to you.

21 A. Yes.

22 Q. In the third paragraph he makes reference to some
23 meeting the following day with Delgado people, right?

24 A. I think this is the investment bankers we were talking
25 about before maybe.

1 Q. Do you have any further information about what that
2 meeting was about?

3 A. No.

4 Q. Then he says to you, "I have sent you via Mr. Good, all
5 necessary documents and now you should not have any more
6 excuses not to provide sending funds as per our understanding."
7 Do you see that?

8 A. Yes.

9 Q. That's a reference to Brian Good?

10 A. Again, I don't remember the specific e-mail, but this is
11 about the time frame that I met with Brian Good.

12 Q. And Larry Corna brought Brian Good into this deal,
13 right?

14 A. I didn't know that. I thought that -- I didn't know
15 they were related.

16 Q. What documents had Pavanelli sent you via Brian Good?

17 A. I don't remember. The meeting with Brian Good I think,
18 if I'm remembering correctly, occurred at Crabbe Brown. And I
19 don't think I attended. But I might have. I just -- But he
20 was bringing some assortment of documents that ended up, you
21 know, at Crabbe Brown in their hands. I don't remember what
22 they were.

23 Q. Brian Good at that time was an Ohio resident, right?

24 A. He was -- I don't know the answer. At some point he
25 was. He had a house in Arlington somewhere, I think.

1 Q. He wasn't one of the people like Pavanelli and Schianchi
2 and Usuelli and Pedro Wick who came from Italy or Switzerland,
3 right? He was a local guy?

4 A. Yeah, yeah, he was a U.S. guy for sure.

5 Q. But you don't recall what necessary documents he brought
6 you from Pavanelli?

7 A. No, or whether I would have called them necessary. He
8 is saying necessary for him to get more money. So as I said,
9 whatever the documents were, ended up in Crabbe Brown's hands
10 either directly or as part of a meeting they had with him.

11 Q. Then after the obligatory reference to the Larry Corna
12 affair, a paragraph we can skip -- actually two paragraphs --
13 there is a paragraph that starts, "My attorney, Dr. Jacir is
14 having an extremely important meeting with the President of the
15 financial subcommission of the Venezuelan Parliament for the
16 final decision" -- and he switches to all cap letters -- "I
17 must funds available before that time." Do you see that?

18 A. Yes, I do see that's in the e-mail.

19 Q. Was it your understanding at that time that Pavanelli
20 was trying to make sure that funds would be available to be
21 dispensed in connection with this extremely important meeting
22 that Jacir was having?

23 A. Again, I don't have that understanding. I don't recall
24 what my understanding was at the time. But my reading of this,
25 it just seems to be this constant asking for more money.

1 Q. And then Pavanelli makes some insult at the end about
2 you having only provided crumbs, which he misspelled as
3 "crambs." Right?

4 A. Yeah.

5 Q. And then you sent the response that appears on the first
6 page of this exhibit, J-35, right?

7 A. Again, I don't recall this e-mail, but I sent -- It's
8 from me to him, Usuelli, Good and John.

9 Q. And you can see in the third paragraph, you do see that
10 you met with Brian Good, right?

11 A. The third paragraph. We met with Brian Good. It might
12 have been referring to our team.

13 Q. Does that refresh your recollection in any way about any
14 interaction with Brian Good?

15 A. I think, you know, I would have said this even if I
16 wasn't present, you know. But, again, it doesn't refresh my
17 recollection.

18 Q. Then in the third-to-last paragraph there's another
19 reference to whatever efforts Delgado was mounting at this time
20 to try to monetize the note, correct?

21 A. I beg your pardon?

22 Q. In the third-to-last paragraph --

23 A. Third to last, okay.

24 Q. -- there's some reference to an offer -- you suggesting
25 there will be some offer only if Delgado is unsuccessful,

1 right?

2 A. I don't see -- the third.

3 Q. It says, "In the past we" -- meaning you -- "have
4 discussed my offer to begin the process of placing 50 million
5 of these bonds with a U.S. buyer." Right?

6 A. Yeah.

7 Q. And then you proposed to undertake that effort on a best
8 effort basis and complete it within a certain amount of time,
9 right?

10 A. I say that I have offered -- I say that, yes, in
11 connection with the other things that I am saying in that
12 paragraph.

13 Q. And in essence, without parsing this too carefully,
14 you're saying you'll do that if Delgado is unsuccessful, right?

15 A. If the deal coming up is successful, what does he need
16 me for? Basically, let's see what happens with this deal.

17 Q. And then in the second-to-last paragraph, you have made
18 a request for -- for your deed of trust that apparently hadn't
19 been sent, right?

20 A. Yes.

21 Q. All right. That's it for J-35 for now.

22 A. I also -- okay.

23 Q. Something you wanted to add?

24 A. Well, I'm just saying I was kind of giving him the stiff
25 arm here saying, if you can't wait, then you can't wait. It's

1 up to you. So --

2 You know, it's coming, to correct what I just said here, I'm
3 starting to think I did attend that meeting. I'm concerned I
4 have a vague recollection of sitting in a room with Alcalde and
5 Brown with Good. So I'm starting to see his face now. So I
6 couldn't remember what he looked like. So it's possible that I
7 met with him.

8 Q. On how many occasions did you meet with Brian Good in
9 connection with your dealings with Pavanelli?

10 A. Well, I was having trouble remembering that time. And
11 I'm still not sure it occurred. But I think I met with him at
12 least once.

13 Q. Generally speaking, what was his role?

14 A. Just he was bringing stuff, he was bringing documents,
15 at that point.

16 Q. Did you understand that like Corna, he was a
17 representative of Pavanelli?

18 A. I didn't -- you know, my -- He was bringing documents
19 for Pavanelli. I didn't know whether he was a representative
20 or not, but he was doing it for Pavanelli.

21 Q. He wasn't working for you, right?

22 A. No, he wasn't working for me.

23 Q. Now yesterday Mr. Elliott asked you were you interested
24 in combining or joining with Gruppo Triad to collect what the
25 Attorney General had said were final and binding. Do you

1 remember that question?

2 A. No, but I'm not saying it didn't happen.

3 Q. And do you remember telling him, quote, no way on earth,
4 end quote?

5 A. Well, certainly toward the end, that's the truth. So in
6 context, you know, I didn't know the guy. If you are asking me
7 in January, I didn't know the guy very well. But by the time
8 we finally decided to go ahead and ultimately really file the
9 lawsuit, yes, there was no way in hell.

10 Q. When did you come to the conclusion there was no way on
11 earth or in hell that you ever wanted to combine or join forces
12 with Gruppo Triad?

13 A. In the context of the lawsuit, you know, it was -- he
14 was getting just -- He was a difficult guy to begin with, as I
15 said, stubborn and difficult, always asking for money. Just
16 not the kind of guy to be around all the time. And it just got
17 worse and worse and worse. And it wore me down, and it wore
18 Crabbe Brown down, too. And I'm hard to wear down. By the
19 time Crabbe Brown fired him, they said, we're not going to deal
20 with this guy anymore in July, certainly, you know, I was there
21 with them with the same conclusion. As to how long before
22 that, I don't know.

23 Obviously, we had this deal that we had agreed to
24 where we were going to file a lawsuit in June, and he was going
25 to have some part in it. But, you know, that deal had failed.

1 So I wasn't wild about that. And I actually, like I told you
2 in the deposition, I didn't think it would ever happen.

3 Q. You didn't think what would ever happen?

4 A. That Crabbe Brown would ultimately represent the guy and
5 file a lawsuit for him.

6 Q. All right. We're going to turn now to D-581, that we
7 have looked at before, but we are going to look at it in a
8 different light. You may have a copy up there, at least we
9 expect you do. This is the June 23, 2004, agreement.

10 A. I don't think I have it in this file here for sure.

11 Q. Let me ask Mr. Baldwin to check on that, please.

12 A. Should I keep this whole pile here?

13 Q. We can probably relieve you of some of that.

14 MR. SCHWARTZ: Sorry, Your Honor. I think it was at
15 one point in front of him. We may have other copies.

16 THE COURT: I have got my copy.

17 MR. SCHWARTZ: I think, Mr. Baldwin, I have other
18 copies here. Here's another one. Have you got it? Just make
19 sure I haven't written on it.

20 THE DEPUTY CLERK: D-581.

21 BY MR. SCHWARTZ:

22 Q. Before you take a look at that, can you confirm that one
23 isn't written on by us, Mr. Richards? It looks pristine to
24 you?

25 A. Well, there is a note here that says Richards is really

1 a nice guy, but I'm going to get him. I don't know if you
2 wrote that or not.

3 Q. No, that was Mr. Lucas.

4 A. No, there's no writing on it.

5 I apologize for that. I'm getting a little punchy.

6 Q. Trust me, it wasn't taken personally.

7 So D-581 is the June 21, 2004, agreement, correct?

8 A. Yes.

9 Q. Just to put this into context with this line of
10 questioning, first, we have an agreement of three pages and
11 then signatures by Pavanelli and you on the next -- on the
12 third page and the fourth page, right?

13 A. Yes.

14 Q. And then comes the nonrecourse promissory note we have
15 spent a little time talking about already?

16 A. Yes.

17 Q. And that's also signed on June 23, 2004, by both
18 Pavanelli and you, right?

19 A. Yes.

20 Q. And this agreement was actually signed on the date it
21 says it's signed on, right?

22 A. It seems it says that. It says date, not like the other
23 one effective date. And then there's a fax on top that's of
24 the same date. So it seems that way, yes.

25 Q. And this is the first of the agreements you actually

1 entered into with Gruppo Triad, right?

2 A. Well, I don't know if there were other agreements before
3 this or not. You know, this was an arc back and forth. But
4 certainly this agreement was in effect -- went into effect on
5 6-23.

6 Q. Can you think of any agreement you went into, a written
7 agreement you entered into, with Gruppo Triad prior to June 23
8 of 2004?

9 A. Well, we talked about the April 8 agreement that he
10 signed that I don't think I did. Right? I don't think I
11 countersigned at that time.

12 Q. That wasn't in effect, right?

13 A. That is -- Well, you know, even if it were, at this
14 point it would no longer be in effect because there was a new
15 deal, right? So --

16 Q. Let's forget about April 8 until we get to August.

17 A. And, yeah, so I don't think so.

18 Q. Okay.

19 A. I don't recall seeing any between in that interim
20 period.

21 Q. Okay. So let's walk through some of the salient
22 features of this particular agreement. So just for background
23 purpose, you have various whereas recital clauses, right?

24 A. Right.

25 Q. And the third to the last of them on the first page is

1 "Gruppo is managing the final authorization procedures within
2 the judicial, legislative and monetary branches of the
3 Venezuelan government." Right?

4 A. Which whereas? I'm sorry.

5 Q. Third to last. Or sixth from the top.

6 A. Yes, it says that he's attempting to have them honored.

7 Q. And then if you turn to the next page --

8 A. In Venezuela, yeah.

9 Q. Excuse me. There's an Article 1 that says, "Skye will
10 purchase 100 million face value of Bandagro notes." Right?

11 A. Yes.

12 Q. And 1.2 talks about the nonrecourse promissory note,
13 right?

14 A. Yes.

15 Q. Then we have Article 2, Future Actions, right?

16 A. Yes.

17 Q. That's what I would like to focus on.

18 A. Okay.

19 Q. 2.1 says, "Skye will file lawsuit against Venezuela."
20 Right?

21 A. Future actions after the purchase, yes, in the future.

22 Q. And then it goes on to say, "The law firm engaged by
23 Gruppo Triad, Crabbe, Brown & James, will file the lawsuit
24 under the terms, fees and conditions agreed to by Gruppo, all
25 of which will remain in full force and effect." Right?

1 A. Yes. Yes, they were transferring those terms to this
2 agreement, whatever terms he had agreed -- I think what had
3 happened was they had agreed to represent him a little before
4 this, and we were trying to incorporate whatever those terms
5 were into this agreement.

6 Q. Had you seen the Gruppo Triad/CBJ engagement agreement
7 by the time you signed this June 23, 2004, agreement?

8 A. I don't know.

9 Q. Let's look at 2.2. It says, "Skye and Gruppo will
10 consult on the lawsuit and will jointly instruct CBJ as to the
11 conduct of the lawsuit." Right?

12 A. Yep, that's what it says.

13 Q. Then we have two provisions contemplating Skye making a
14 demand for payment of the notes and Gruppo immediately
15 transferring notes 3/12 and 4/12 to CBJ, right?

16 A. Yep.

17 Q. And then 2.5, "Immediate upon receipt of the notes, Skye
18 will file the lawsuit through CBJ, and CBJ will operate under
19 the existing agreement with Gruppo of which Skye will become a
20 beneficiary and party." Right?

21 A. That's what it says.

22 Q. Then we have Article 3, Custody of Notes. I would like
23 you to look at 3.3. It says, "In the event the lawsuit is not
24 successful, CBJ will return the notes to Gruppo and the
25 obligations of Skye under the NRPN, the nonrecourse promissory

1 note, will be cancelled." Right?

2 A. Yep. If we failed, we failed. I will give him his
3 notes back. He wanted them back. Still will.

4 Q. Under the terms of this agreement, if the contemplated
5 lawsuit didn't work, the purchase and sale will be rescinded?

6 MR. ELLIOTT: Your Honor, if I can, I want to note an
7 objection. This is an agreement that relates to two notes that
8 are not even at issue in this case. And the testimony has been
9 pretty clear that this agreement wasn't in effect as to the
10 notes that are at issue.

11 THE COURT: What is your response?

12 MR. SCHWARTZ: I have several responses. First of
13 all, this is the template and the precursor of the April 8
14 agreement that was entered into in August. The two notes here
15 are the subject of the demand letter that was later modified to
16 become the demand letter for the two notes at issue here. And
17 --

18 THE COURT: But just to be clear, this involves notes
19 that are not subject to this lawsuit but were the subject of
20 the demand letter. We are going to move through this. And I
21 assume we are going to get to the agreement that involves the
22 actual basis for this lawsuit.

23 MR. SCHWARTZ: Yes.

24 THE COURT: If it's preliminary, I will let you move
25 through this quickly.

1 MR. SCHWARTZ: Thank you.

2 BY MR. SCHWARTZ:

3 Q. I only want to focus on one other aspect of this
4 document because we have looked enough at this waterfall
5 already. And if you will turn to the Bates stamped page
6 005874, there's a section called distribution of funds, right?

7 A. Yes.

8 Q. If you look at section 2.1, it says, "In the event the
9 Bandagro notes are paid," then I'm going to skip to section
10 2.1B.

11 A. Okay.

12 Q. It acknowledges that you had deeds of trust at this time
13 in an amount of \$9,493,333, right?

14 A. That's what it says.

15 Q. And what this provision here says in the next sentence
16 is that "If for some reason unrelated to the resolution of the
17 contemplated lawsuit those deeds of trust are paid, then Gruppo
18 Triad's obligations to Skye under this agreement would be
19 reduced correspondingly." Right?

20 A. That's what this says.

21 Q. All right. That's all I have on this particular
22 agreement.

23 Now let's move to the agreement that's got the date on
24 it of April 8, 2004. This is D-521.

25 THE DEPUTY CLERK: D-521.

1 BY MR. SCHWARTZ:

2 Q. Now, again, I'm not going to spend any material amount
3 of time, if I spend any, on the waterfall, which we have
4 covered more than adequately. But I do want to look at some of
5 the other features of this agreement, nor am I going to spend
6 time talking to you about when it was executed. We have been
7 over that enough times.

8 So let's take a look under the section Purchase, which
9 is Article 1.

10 A. Yes.

11 Q. And 1.3, says that "Gruppo cooperate with Skye, and will
12 provide Skye with all needed documents, reports, interviews,
13 other materials or witnesses in Gruppo's possession, influence
14 or" -- it looks like it meant to say control -- "as requested
15 by Skye." Right?

16 A. Every time I wanted something from Pavanelli, he would
17 try to charge me money. So I tried to obligate him to get me
18 this stuff without charging me -- attempting to charge me for
19 it.

20 Q. The idea here was since you were stepping into Gruppo
21 Triad's shoes as the plaintiff here, you expected to need
22 cooperation from Gruppo Triad to support the lawsuit, right?

23 THE COURT: Wait a minute. There's an objection.

24 MR. ELLIOTT: Thank you, Your Honor. I'm going to
25 object. This document does not say anywhere that he's stepping

1 into Gruppo Triad's shoes.

2 THE COURT: Rephrase the question.

3 BY MR. SCHWARTZ:

4 Q. Since you were going to be bringing a lawsuit on a
5 purported promissory note that was being provided by Gruppo
6 Triad under an agreement that required you to pay certain
7 litigation proceeds to Gruppo Triad if you succeeded, this
8 provision contemplated that Gruppo Triad would cooperate with
9 and provide support to Skye in the prosecution of the
10 litigation, right?

11 A. One would assume that if someone had an interest, like a
12 promissory note in the litigation that they might be paid on,
13 that this kind of provision would be unnecessary. The reason
14 this provision was here so that he was obligated to do it and
15 didn't try to charge me money, and I could point back to it if
16 we ever needed anything, that he would give it to me.

17 Q. And then I'd like you to look at 4.4 of this agreement.

18 A. Yes.

19 Q. You may need to do a little consultation of the
20 definitions first. So let me help you with that. We need to
21 go back to the first page and look at the definition of the
22 Bandagro notes or the notes in the fourth whereas clause. Let
23 me know if you're there.

24 A. What page, I am sorry?

25 Q. First page, fourth recital. And just to move things

1 along here, do you see that that recital defines the Bandagro
2 notes or the notes broadly to include all the purported Gruppo
3 Triad notes?

4 A. That's what it looks like.

5 Q. Before I go to 4.4, I want to emphasize something here.
6 So this agreement doesn't say what notes Gruppo Triad was going
7 to provide to you, right?

8 A. I'd have to look through the whole thing if it refers to
9 7/12 and 8/12 anywhere.

10 Q. I think you can search it high and low to see that, but
11 if you'd like to take a moment to check it?

12 A. In the interest of time, I'm willing to take your word
13 that it doesn't refer to specifically 7/12 or 8/12.

14 Q. All right. So now let's go to 4.4.

15 A. If my recollection is correct, that this was the April
16 agreement where we modified waterfall continuously -- Remember,
17 this agreement is from December of '04 or January of '05. We
18 agreed to that -- or you didn't agree to it, but we established
19 that in a deposition. Again, if this is the same agreement
20 from April of '04 where we kept repeatedly substituting the
21 waterfall as I gave him more money, naturally, it wouldn't have
22 7/12 or 8/12. So I'm taking your word for it that it doesn't.

23 Q. All right. Now let's go to 4.4?

24 A. Okay.

25 Q. So even though this agreement doesn't specify which

1 notes somehow amounting to \$100 million in face amount are
2 going to be provided to you, it then proceeds to provide in
3 4.4, "If there is any kind of liquidity event with regard to
4 any of the notes, there is some distribution of proceeds
5 formula." Right?

6 A. Yes. So we wanted, of course if there was some payment,
7 we wanted to participate.

8 Q. I think that's all I have for you on this one.

9 MR. SCHWARTZ: Your Honor, might this be a good time
10 to take the break?

11 THE COURT: We will take a 15-minute recess at this
12 time.

13 (Recess from 2:50 p.m. to 3:05 p.m.)

14 THE COURT: Mr. Schwartz, you may continue.

15 MR. SCHWARTZ: Thank you, Your Honor.

16 BY MR. SCHWARTZ:

17 Q. Mr. Richards, I'm going to show you J-44, another in the
18 series of agreements.

19 COURTROOM DEPUTY CLERK: J-44.

20 BY MR. SCHWARTZ:

21 Q. We're now into 2005, Mr. Richards. Here, we have a June
22 16, 2005, agreement and instructions to escrow agent. Do you
23 recognize this document?

24 A. Yes, it looks familiar.

25 Q. This is one in the evolving series of agreements

1 concerning the lawsuit and the proceeds from the lawsuit or,
2 let's put it this way, the potential proceeds from the lawsuit;
3 is that right?

4 A. I like it better the way you said it the first time, but
5 this is part of what I had described as my effort -- I'm
6 sorry -- this is part of what I described as my effort to
7 gradually push Pavanelli back in the waterfall and ultimately
8 out.

9 Q. So, a few new players entered the stage with this
10 particular agreement. If you look at the waterfall provision
11 at the bottom, there's seven numbered points. Do you see that?

12 A. Yes.

13 Q. And here we have Ray -- I'm sorry -- Jay Ramsey and Ray
14 Henehan working their up the waterfall, \$500,000 a piece. Who
15 are they?

16 A. So, Ray Henehan and Jay Ramsey are two investors, two
17 outside of me, who had invested money with Gruppo Triad, kind
18 of like John Finn had done. And somehow I got connected with
19 Ray Henehan and Jay Ramsey. Ray was an attorney, and Jay owned
20 a business. And they asked -- Somehow -- Somehow they got into
21 this waterfall because they wanted to be part of our effort in
22 the lawsuit, as opposed to having a 500,000 deed of trust with
23 Gruppo Triad. And, from my perspective, I agreed to that and
24 then sort of indicated, as we indicated here, made Pavanelli
25 agree to it.

1 Q. So, Pavanelli's \$39 million became 38 million? Is that
2 the idea?

3 A. I'm not sure that's the -- I don't think that's the
4 exact reason, but I think -- and I don't specifically recall
5 how we reduced his promissory note, or even that we did, but
6 that's what it says there.

7 Q. Well, it used to be 39, right?

8 A. Well, if you look at the waterfalls, it was -- in
9 December of '04 and/or January of '05, that time frame, it was
10 39 thousand (sic). So, in the new waterfall in June of '05,
11 it's reduced to 38 million.

12 Q. And then right above that comes a million for Ramsey and
13 Henehan, right?

14 A. Five hundred thousand each, yeah. So, it could be
15 consanguineous. Maybe it was. Right?

16 Q. Let's look at sixth. It says the remaining amount,
17 after various steps in the waterfall, if any, shall be
18 distributed as determined by Skye in its sole discretion, but
19 will include an interest payment by Skye to Gruppo determined
20 by Skye in its sole discretion. Do you see that?

21 MR. ELLIOTT: Your Honor, may I just object to this
22 particular document on relevance grounds? This happens long
23 after the transaction.

24 THE COURT: Right. This is -- Now we're into 2005, of
25 course, right?

1 MR. SCHWARTZ: Yes.

2 THE COURT: And, so, tell me how you see a relevance
3 in this, and I'll consider the objection.

4 MR. SCHWARTZ: At the risk of --

5 THE COURT: I mean, this would implicate the proceeds
6 of any recovery in this lawsuit. I get that, but this is after
7 the lawsuit's been filed, the notes have been purchased. Where
8 does this take us?

9 MR. SCHWARTZ: Well, the short answer is it's a joint
10 exhibit. So it's already --

11 THE COURT: Well, that's always the hundred-dollar
12 question: Does that mean it's automatically admissible?

13 MR. SCHWARTZ: Yes, I think so.

14 MR. ELLIOTT: It is certainly not an exhibit that we
15 have elected to use. We didn't have an objection to it, but we
16 didn't intend to use it.

17 THE COURT: More fundamentally, I have to decide the
18 facts in this case. Tell me where it takes the facts.

19 MR. SCHWARTZ: There were a handful of these
20 agreements, and there is about two or three more, but I want to
21 show you -- This one is not the most important of them.

22 THE COURT: Well, the numbers change, and --

23 MR. SCHWARTZ: There's more changes than that. There
24 are other provisions reflecting the ongoing nature of the joint
25 venture or partnership between Skye and Gruppo Triad that are

1 material. There are acknowledgments and warranties and
2 representations that come in that are different. And there are
3 other issues that --

4 THE COURT: Well, just to be blunt, what would you ask
5 me to use this for as far as a triable issue or as an inference
6 to be drawn, whatever?

7 MR. SCHWARTZ: There will be credibility issues that
8 arise out of these agreements as well. And it's hard to
9 telegraph that kind of thing, but they are there.

10 THE COURT: Well, it's got to be a material issue in
11 the case, or else we're looking at extrinsic evidence that
12 wouldn't really play in. It can't just be a credibility
13 matter.

14 MR. SCHWARTZ: Well, I would think the credibility of
15 Mr. Richards is an issue in the case. And credibility always
16 has characteristics that pervade any particular document or
17 fact. And there are elements --

18 THE COURT: The issue under Rule 608 is whether this
19 is a matter that's triable in the case or whether it's purely
20 collateral.

21 Now, if it's just a matter of -- You know, you could ask
22 him his age and you can cross him with his birth certificate.
23 That may go to credibility, but it's not going to be
24 admissible, right?

25 MR. SCHWARTZ: Well, our theory of the case includes

1 --

2 THE COURT: I mean, if it links to a theory, if it
3 links to something triable, I'll hear you; but not just an
4 abstract to show him to be a liar with documents that don't
5 connect to the case.

6 MR. SCHWARTZ: All right. Our theory of the case
7 includes that all of these agreements and the entire
8 architecture of the lawsuit was concealed from you and from us
9 for more than a decade.

10 THE COURT: And let me just ask you this: Why
11 wouldn't what happened at the time of the filing be -- Why do
12 you need things after that date?

13 MR. SCHWARTZ: Because things were said to the Court
14 in public filings that we will argue to you were highly
15 misleading and reflect --

16 THE COURT: But to be blunt, again, I'm the trier of
17 fact. I'm just going to tell you what's on my mind. I'm not
18 going to resolve this. But you've established that, at the
19 time the lawsuit was filed, there's a waterfall. It's pretty
20 clear about who gets what and who is a party and who isn't.
21 Beyond that, what do these new documents add?

22 MR. SCHWARTZ: It's clear in retrospect now. What the
23 new documents add are foundation that will show you that the
24 pattern that started with the complaint and the redaction of
25 that agreement in its entirety continued for a long time

1 thereafter. And I can approach this from the back end, and it
2 might be clearer. So, maybe I should do that.

3 THE COURT: I'll give you an opportunity. Go ahead.

4 MR. SCHWARTZ: All right. I'm going to do this in
5 reverse, and then --

6 THE COURT: All right.

7 MR. SCHWARTZ: -- we'll see if my argument works.

8 All right. We're going to need to mark a new
9 impeachment exhibit.

10 Mr. Lucas, always a source of good ideas, has whispered
11 --

12 MR. LUCAS: I do speak, though, Your Honor. I just
13 wanted to tell you that. I will eventually.

14 THE COURT: You're ordering a copy of the transcript
15 after this, I understand?

16 MR. LUCAS: I'm sorry?

17 THE COURT: You're ordering a copy of the transcript,
18 of this, this last comment from Mr. Schwartz?

19 MR. LUCAS: Just to hang in my bathroom, Your Honor.

20 THE COURT: All right. Very good.

21 MR. SCHWARTZ: Mr. Lucas points out that the Plaintiff
22 did endeavor to adduce evidence concerning the extent of its
23 contributions to Gruppo Triad during the pendency of the
24 lawsuit. So, on some level, putting the agreement structure
25 before the Court to understand those assertions is relevant.

1 THE COURT: Well, it would be easier if you didn't do
2 it line by line. I mean, I get the testimony. There's more
3 money being put in over time. The waterfall changes. And, if
4 you think there is something more significant than that, I'll
5 give you an opportunity. But I don't think it takes a
6 line-by-line analysis.

7 MR. SCHWARTZ: Okay. So maybe what I'll do is reverse
8 course a different way and just show him the agreements one by
9 one, authenticate them, no questions about the context.

10 THE COURT: All right.

11 MR. SCHWARTZ: All right. And then we'll --

12 THE COURT: Again, I don't see anything particularly
13 prejudicial at this point, but I think there is an efficiency
14 issue.

15 MR. SCHWARTZ: I think that's a good suggestion.

16 It may be that Counsel can stipulate that these are a
17 series of agreements and reserve rights as to relevance to the
18 extent it's not a joint exhibit.

19 THE COURT: Mr. Elliott, would you be willing to
20 concede that?

21 MR. ELLIOTT: Your Honor, I'm happy to locate the
22 documents and stipulate that they are what they are, with the
23 reservation of relevance.

24 THE COURT: All right.

25 MR. SCHWARTZ: That seems like a good solution.

1 THE COURT: That would work for me.

2 MR. ELLIOTT: Do you want to do that --

3 MR. SCHWARTZ: Should we take five minutes, or --

4 THE COURT: Well, are these essentially each
5 reiteration of the waterfall agreements?

6 MR. SCHWARTZ: Yes, but the agreements mutate into
7 different forms from time to time. But that's the essence of
8 it.

9 THE COURT: So, with that representation, would that
10 give enough for you to be confident you could agree on these?

11 MR. ELLIOTT: I'm sure that --

12 MR. SCHWARTZ: Why don't we give Rex the numbers and
13 the documents?

14 MR. ELLIOTT: At the conclusion of the day, I can take
15 a look at those. If that's what they are --

16 THE COURT: All right.

17 MR. ELLIOTT: -- you know, obviously, while we don't
18 think they're relevant -- and that's part of the reason they
19 were redacted before, is because we didn't think it was
20 appropriate to disclose to Venezuela what our investors and
21 others were getting after the deal, but I'm happy to look at
22 that when the testimony is done.

23 THE COURT: All right. We'll just leave it at that.
24 All right.

25 MR. SCHWARTZ: Fine. I think that's a good idea.

1 So, let's still go with the impeachment exhibit.

2 What number are we up to? Thirteen.

3 COURTROOM DEPUTY CLERK: Impeachment 13.

4 BY MR. SCHWARTZ:

5 Q. Mr. Richards, do you have in front of you Impeachment
6 Exhibit 13?

7 A. I do.

8 Q. All right. Let me see if Mr. Doyle has that loaded so
9 we can put up it on the screen for Mr. Elliott.

10 Mr. Richards, I'm showing you an affidavit that you
11 signed in 2012. Do you recognize this document?

12 A. I don't really remember it, to be honest with you.

13 Q. Take a look at page 7, please. Is that your signature
14 on page 7?

15 A. Yes.

16 Q. Do you recall that, in 2012, there was a dispute about
17 whether this Court was a convenient forum for this litigation?

18 A. I don't.

19 Q. Do you recall signing this affidavit?

20 A. I don't.

21 Q. Why don't you --

22 A. I'm not saying I didn't do it. I just don't remember.

23 Q. Why don't you take a look and see if it refreshes your
24 recollection.

25 A. I just kind of read through it. And, again, I'm just

1 searching my memory for why this was filed, or why this was,
2 you know, prepared for me. And so I just -- I just don't
3 remember this.

4 Q. It looks utterly unfamiliar?

5 A. Yeah. I just don't remember doing this. I'm looking at
6 some of the stuff in there, and it's certainly stuff that looks
7 like it were true. But, again, I don't remember this. This
8 was three years ago, or four years ago.

9 Q. Let's look at Paragraph 24.

10 A. Yes.

11 Q. In this affidavit from 2012, you swore, in Paragraph 24,
12 that the claim that Skye is a front for foreign interests is
13 absurd, the only interest that Skye represents in this lawsuit
14 is its own, right?

15 A. Yes.

16 Q. And this affidavit was filed, as you can see from the
17 ribbon at the top, on April 20th of 2012, right?

18 A. Yes.

19 Q. And that was after the last iteration of the waterfall
20 that morphed over time from 2004 all the way to 2010, right?

21 A. Well, I'll take your word for it if that's what you're
22 saying. I don't recall exactly when the last waterfall was
23 redone, but I think it was before this.

24 Q. And, as of the time you signed this affidavit and it was
25 filed, there were many other interests that stood to benefit

1 from any potential recovery in this case, correct?

2 A. Well, as I recall the waterfall at the time, the
3 beneficiaries were basically me, my attorneys, and, you know,
4 the people I'd assigned interest in it to help me.

5 Q. And, as of the time you filed this affidavit, Gruppo
6 Triad still had a residual interest in the potential litigation
7 proceeds, correct?

8 A. By then, they were way back, yes, you know, unlikely to
9 ever receive anything in this case.

10 Q. However far back Gruppo Triad was in this waterfall on
11 account of your diluting it over time, it still had a residual
12 interest as of April 20th, 2012, correct?

13 A. There was that -- that distant interest where they had
14 been pushed back to, yes.

15 Q. And that distant interest is a Panamanian corporation,
16 correct?

17 A. It was Gruppo Triad. Right? I don't -- I don't know if
18 it was Italian, Swiss, or Panamanian.

19 Q. And, under the last iteration of the waterfall that was
20 in place at the time you signed this affidavit, your good
21 friend, Antonio Usueli, had a place in the waterfall, correct?

22 A. I think he would get part of the Gruppo note if it was
23 ever paid.

24 Q. And, as far as you're aware, Usueli is a resident of
25 Switzerland, right?

1 A. Yes, he is a resident of Switzerland.

2 Q. And, under the last iteration of the waterfall, Siro
3 Schianchi stood to gain under some potential recovery scenario,
4 right?

5 A. Again, I think they were part of Gruppo Triad's note.
6 In other words, the part of the note that they had been pushed
7 back was also partially assigned to Schianchi and Usuelli. I
8 really don't know if there was anything left for Gruppo at that
9 point and it was just those two or it was the three of them.

10 Q. And, Schianchi, he's a Swiss resident, right?

11 A. I think so, yes.

12 Q. And, then, there were various and sundry residents of
13 the United States, like Ramsey and Henahan and DiBenedetto,
14 whose names appear in the waterfall, right?

15 A. Yes. I don't know about DiBenedetto appearing in the
16 waterfall, but I know Ramsey and Henahan appeared in the one we
17 just looked at.

18 Q. And, at the time this affidavit was filed in April 2012,
19 none of these waterfall agreements had been produced in this
20 case, correct?

21 A. I don't know.

22 Q. And, at the time this affidavit was filled out, the
23 purchase agreement that had been redacted when it was first
24 produced in 2006 still remained heavily redacted, correct?

25 A. I don't know.

1 Q. So, at the time you filed this affidavit, there was no
2 information available to Venezuela or the Court to test your
3 assertion in Paragraph 24, right?

4 A. Well, again, I don't know what was available to -- You
5 guys had been litigating for ten years by then, or almost ten
6 years. So, I don't know what was available to you.

7 Q. And, in fact, Skye has been a front for a foreign
8 interest from the day you filed this case; isn't that true?

9 A. I would repeat what I say in this, in this thing. It's
10 absurd. No. I'm not a front for anybody. I'm representing my
11 own interest in this case.

12 Q. Then there's Miguel Jacir, right? He has an
13 eight-percent interest in any potential recovery. And that
14 comes off the top, doesn't it?

15 A. I -- I don't know if it comes off the top. Miguel had
16 claimed he had a lien in Venezuela. And I think we provided
17 that, you know, if that were a lien, that he would get his
18 eight percent. I don't know exactly what the various
19 waterfalls said at the various times, but I think we made it
20 clear that we had intended to honor his eight-percent fee if it
21 ever came that I settled the case.

22 Q. And that eight percent, whether it's specifically
23 attributed to him as it is on occasion, or just left as eight
24 percent without explanation, it's always been your expectation
25 that if you recovered anything in this case, you'd pay Jacir

1 that amount, right? You knew that from before you filed the
2 case?

3 A. No, I wouldn't say that. But, you know, listen, he did
4 a really good job. He was entitled to a fee. You try to
5 respect attorneys' fees, and I would have tried to have done
6 that if it were able. And at some point I think we put that in
7 writing: That if I were -- if I was successful in the lawsuit,
8 that he would get some of the proceeds.

9 Q. And you knew as of April 20th, 2012, that Jacir was
10 going to get paid out of any potential litigation proceeds,
11 right?

12 A. Again, I don't know that. I know we made an agreement
13 with him -- and I think it was shortly before -- I think it was
14 in the last year or so -- that we specifically would do it.
15 But, again, I -- if he'd asked me, I'd have told him, Yes,
16 we'll honor your fee; you earned it.

17 Q. Do you have your deposition transcript available?

18 A. Yeah.

19 Q. I'm looking now at your 30(b)(6), and I'm looking on
20 page 13, and I'm looking on Line 7. What I'm looking at is an
21 answer, quote: "We knew that before we purchased the notes."

22 Next sentence: "Jacir had a claim for eight percent
23 recovery on the notes that allegedly he had filed some sort of
24 lien on them in Venezuela."

25 A. Yes. His representation was that, you know, if

1 Venezuela paid anything, this would just be deducted.

2 Q. And he's Venezuelan, right?

3 A. He's Venezuelan.

4 Q. Then there's Manfredi and Bonetti, also known as
5 Woodstrite, right?

6 A. Yes.

7 Q. They're also Venezuelan, aren't they?

8 A. Yes.

9 Q. And you've acknowledged that they have a 25.11-percent
10 lien?

11 A. I've acknowledged that's the correct number. I think I
12 said I hadn't seen their agreements. I don't know how valid
13 their lien is. I don't know what the circumstance is under
14 which it's precisely earned. I think we identified this as a
15 risk that there would be a lien on the proceeds.

16 MR. SCHWARTZ: All right. Your Honor, with regard to
17 the agreements, including the final one that lays out the last
18 waterfall, we'll discuss with Mr. Elliott if we can work out a
19 stipulation.

20 THE COURT: When did you receive those?

21 MR. SCHWARTZ: Magistrate Judge Kemp entered an order,
22 the date of which was sometime in 2014, as I recall, in the
23 fall of 2014, November. So, as I -- I'm doing this from
24 memory, but I think it's important. So, if I misspeak, I'll
25 try to correct it, but here is my understanding: I believe

1 that, for the first time, the unredacted version of the
2 so-called April 8th agreement was disclosed in approximately
3 September of 2014.

4 THE COURT: 2014?

5 MR. SCHWARTZ: Yes.

6 THE COURT: All right.

7 MR. SCHWARTZ: More than ten years into the case.

8 THE COURT: I just want to be clear about this. You
9 haven't had a chance to do your redirect. So I'm not going to
10 make any conclusions. I see two issues here. I'm always
11 concerned when there's a misrepresentation made to the Court.
12 On the other hand, this could have been the subject of a motion
13 a year and a half ago. When you didn't have the information --
14 I understand -- there's not much you can do. But this didn't
15 just come up as we're preparing for trial, it doesn't sound
16 like.

17 MR. SCHWARTZ: It was the subject of several motions,
18 and Magistrate Judge Kemp --

19 THE COURT: That's to compel.

20 MR. SCHWARTZ: Yes.

21 THE COURT: Not to act upon what you found.

22 MR. SCHWARTZ: Well, now, as I say, it's a credibility
23 issue.

24 THE COURT: Well, I'll take it for that purpose.

25 MR. SCHWARTZ: All right. The record in front of

1 Magistrate Judge Kemp is clear on the fight over this, which we
2 won.

3 THE COURT: All right.

4 MR. SCHWARTZ: Okay. Let me just move to the next
5 subject.

6 MR. LUCAS: Your Honor, would you like us to supply
7 you with the exact date of that order?

8 THE COURT: No. That's okay. I can find that. Thank
9 you.

10 BY MR. SCHWARTZ:

11 Q. Mr. Richards, in the course of your investigation -- Let
12 me rephrase that. In the course of your exploration of this
13 investment thesis, you traveled to Caracas in April of 2004, as
14 you've testified, right?

15 A. Yes.

16 Q. And that's when you met with Oscar Guzman Cova, who had
17 written the Ministry of Finance's August 2003 report, right?

18 A. Alcalde and I, yes.

19 Q. And that's also when you met, for the first time, with
20 Carlos Delgado Morean, right?

21 A. Yes.

22 Q. And whether you knew it then, you certainly know now
23 that he is the person who was dispatched by Guzman Cova to go
24 to Switzerland and inspect certain Gruppo Triad notes, right?

25 A. Yes. He was one of two people who inspected the notes.

1 Q. The only one who went to Switzerland, right?

2 A. One went to Miami -- Hepsie Hurtado -- who inspected our
3 notes. And he also went to Switzerland to inspect other notes.

4 Q. And, during that meeting, if you didn't know before, you
5 learned that Guzman Cova had either been fired or resigned
6 under stress from his position at the Ministry of Finance,
7 right?

8 A. Yes. I think we learned it at that meeting, or maybe
9 before. I don't know.

10 Q. Guzman does not speak English, correct?

11 A. That's right.

12 Q. But Delgado does, right?

13 A. Yes.

14 Q. He was educated in the United States, correct?

15 A. I don't know that.

16 Q. When you had this meeting in April of 2004 with Guzman
17 and Delgado which you've described to some extent, you knew
18 that, like Guzman, Delgado was no longer associated with the
19 Ministry of Finance, right?

20 A. I didn't know that.

21 Q. You know that now, don't you?

22 A. I assume the answer is that he's not.

23 Q. All Guzman did -- I'm sorry. All that Delgado did for
24 the Ministry of Finance was go to Switzerland and look at these
25 notes, right?

1 A. So, as far as I know and as to when I knew that that's
2 all he did, I think that's what he did. I didn't see his name
3 referred to in either the AG or had his name mentioned in any
4 other connection with the case.

5 Q. And he did that in March of 2003, right?

6 A. Whenever that investigation was going on.

7 Q. That's apparent on the face of Guzman Cova's report,
8 isn't it?

9 A. I'll take your word for it, if that's true. I
10 don't -- I mean, I didn't read the report. It's in Spanish.
11 So --

12 Q. When you spent time with Delgado in April 2004 in
13 Caracas, that took about five hours, right?

14 A. It was a long time. I would recall four hours, three or
15 four hours; but it could be five.

16 Q. And you spent about an hour, you and Alcalde, with
17 Delgado, and then the balance of that time with both Delgado
18 and Guzman Cova, correct?

19 A. My recollection as I sit here today is that that was all
20 together at the dinner. If you want to refresh my memory with
21 something, I'm happy to look at it.

22 Q. Well, perhaps we'll do that.

23 You summarized your impressions of Delgado in an e-mail
24 that I think Mr. Elliott showed you. Do you remember seeing
25 that yesterday?

1 A. Vaguely, yes.

2 Q. Let's take a look.

3 A. If I can see it again -- Let's take a look at it, and
4 I'll tell you if I remember seeing it.

5 Q. All right.

6 MR. SCHWARTZ: It's Plaintiff 129, from my memory. My
7 recollection -- I don't know why the number sticks in my
8 head -- is Plaintiff's 129.

9 THE COURT: Good retention of numbers, if I do say so.

10 THE WITNESS: That's pretty good.

11 MR. SCHWARTZ: Shot in the dark.

12 THE WITNESS: Is it possible to see the whole document
13 --

14 MR. SCHWARTZ: Sure.

15 THE WITNESS: -- so I could read it?

16 If you want to only ask me about one section, I'm happy
17 to look at that section. I think we went over this yesterday.

18 MR. SCHWARTZ: I'm looking at it on the screen without
19 the actual document. So --

20 THE WITNESS: Okay. All right.

21 BY MR. SCHWARTZ:

22 Q. Look in the middle. There's a paragraph: "We met with
23 Roman Delgado."

24 A. Yes.

25 MR. SCHWARTZ: Start one above that, please,

1 Mr. Doyle.

2 Here we go.

3 BY MR. SCHWARTZ:

4 Q. These are the relevant excerpts.

5 A. Okay.

6 Q. Take a look and see if it refreshes your recollection
7 here.

8 A. Yeah. Yeah, for about five hours, four of which were
9 Guzman.

10 Q. And the impression you had of Delgado was he is the
11 fellow who helps with the political aspects of the effort to
12 have the notes honored, right?

13 A. Yeah. I tried to characterize it in terms that people
14 here in my investor group would understand, sort of a lobbyist
15 kind -- we have lobbyists. Sort of a lobbyist/wheeler dealer
16 is guys who help to get things done. That was what I was
17 trying to convey there.

18 Q. And you actually learned about Delgado's involvement in
19 this matter as early as December 2003, right?

20 A. Well, a guy named Delgado was associated with some
21 bankers who he's bringing to Gruppo Triad. That's what I
22 learned: That he had -- was introducing some investment
23 bankers to Gruppo Triad. I didn't know if it was this guy
24 or -- I didn't know -- The name "Delgado," at the time, was
25 meaningless to me.

1 Q. And you came to learn, through 2004, that Delgado was
2 trying to place some of Gruppo Triad's notes with some
3 investment banker, correct?

4 A. That's what -- I thought that's what I just said.

5 Q. And then we saw in the Christmas Day 2003 communication
6 from Usuelli that he told you Delgado was the bearer of fresh
7 information not conveyable through the phone, right?

8 A. I don't remember that, but I kind of remember there was
9 something like that in the context of a whole paragraph, yes.

10 Q. And, not long before you went to Como, Italy -- We saw a
11 communication earlier today where you said you would only ramp
12 up your efforts if Delgado was not successful, right?

13 A. Right. If there was money going to be raised already,
14 then why would -- This was in the context of me saying, Hey,
15 you know, I might be able to place some notes for you at a
16 high, like, 20- to 25-cent sort of ratio; do you want me to
17 explore that? But, of course, it's unnecessary if this deal --
18 this Delgado investment banker deal goes through and there is
19 already money there.

20 Q. So you were in favor of Delgado brokering this deal that
21 would have resulted in a liquidity event for whatever amount of
22 investment you'd made as of that time, right?

23 A. Well, I was -- I wouldn't say I was in favor of it. I
24 was following it, of course. And if -- You know, it's kind of
25 like, if this really is a very good opportunity and somebody

1 else comes in and takes it, that would be a regret. If on the
2 other hand somebody comes in and takes you out, even if it's a
3 small amount at that time, relatively thin, okay, that could be
4 good, too.

5 So it was sort of a ying and a yang kind of thing.

6 Q. And the ying and the yang involved some phone calls with
7 Delgado in the spring and summer of 2004, correct?

8 A. No. The ying and the yang I was referring to is the
9 ying of the deal getting done with these bankers that were
10 supposedly going to Italy -- and I don't recall if we were
11 getting paid off at the time, but I think we would have gotten
12 paid off -- or the yang of me doing the deal and achieving
13 success. So, that's the ying and the yang I was referring to.

14 So, when we're seeing another person coming in to do a
15 deal that you're looking at, well, okay, that -- you know,
16 normally that's not the greatest thing for a company that's
17 trying to do a deal with a company.

18 Q. And, however that worked out or didn't, you had phone
19 calls with Delgado through the spring and summer of 2004,
20 right?

21 A. Boy, I don't recall talking to Delgado in that time
22 frame. I mean, if you having something to refresh my memory --

23 Q. Well, at a minimum, you were here to see the examination
24 of Mr. Alcalde. And we had his time records that documented
25 numerous interactions with Delgado in that time frame, right?

1 A. Yeah. I don't recall you saying time records on this
2 particular topic. But I think -- you know, I don't deny it.
3 If they're there, they're there. Right?

4 Q. In the lead-up to that meeting in Como that you
5 dispatched Alcalde to, you saw that Delgado was included on the
6 invite list and/or copied on e-mail communication, right?

7 A. I think I remember that, yes.

8 Q. Now, you also know that, somehow, Delgado got involved
9 with some effort to intervene to enforce some of the purported
10 notes in this action, right?

11 A. Oh, in this particular case?

12 Q. This particular case.

13 A. Maybe he was associated with Venospa in some way, shape,
14 or form. I don't know what.

15 Q. Venospa, right, V-e-n-o-s-p-a?

16 A. Venospa.

17 Maybe he was associated with them. It was, like, 2009
18 or '10, or something like that.

19 Q. I think your memory is right. And he came to Columbus,
20 Ohio, to talk about joining in this lawsuit, didn't he, Carlos
21 Delgado Morean?

22 THE COURT: Could you spell that again? I'm sorry.

23 V-e-n --

24 MR. SCHWARTZ: It's Carlos Delgado Morean.

25 THE COURT: No, the company.

1 MR. SCHWARTZ: Oh, Venospa.

2 THE COURT: Yes.

3 MR. SCHWARTZ: I'm sorry. V-e-n-o-s-p-a. And I think
4 it's LLC.

5 THE COURT: Thank you.

6 THE WITNESS: I don't remember him coming to talk --
7 to Columbus, Ohio, to talk about intervening in the lawsuit.

8 MR. SCHWARTZ: Well, let's check the deposition on
9 that.

10 MR. ELLIOTT: I'm sorry, Your Honor, but now we're
11 talking about a third party trying to intervene in a lawsuit
12 that has no interest in this case whatsoever.

13 THE COURT: Well, as I understand the thread here,
14 this is a person who was involved in the investigation leading
15 to the Attorney General's report, as well?

16 MR. SCHWARTZ: It's much worse than that.

17 THE COURT: All right. Then, that's the flavor I'm
18 getting here.

19 MR. SCHWARTZ: Yes.

20 THE COURT: The lawsuit, independently, wouldn't be
21 relevant, but the background that ties into it, you're claiming
22 does make it -- I'll hear it.

23 MR. SCHWARTZ: Yes, and there is much more --

24 THE COURT: Continue.

25 MR. SCHWARTZ: -- not all within the competence of

1 this witness, but within the competence of others.

2 THE COURT: Just to be clear on that ruling, the
3 connection also has to be with regard to the Plaintiff. And
4 you're doing that at this time. An independent activity
5 unbeknownst to Skye I don't think would play in much here. To
6 the extent it involves knowledge here, I'll at least consider
7 it.

8 MR. SCHWARTZ: My colleagues don't think I am
9 aggressive enough when we have these discussions. And I'm
10 always urged to articulate our theory of the case and explain
11 how this all fits into the master plan. And I know the Court
12 doesn't want that. So I have to restrain my colleagues, but I
13 could explain this.

14 THE COURT: Well, right now, the objection is
15 overruled. So you're free to move forward.

16 MR. SCHWARTZ: All right. Thank you.

17 BY MR. SCHWARTZ:

18 Q. Okay. Let's look at your individual deposition on page
19 286.

20 A. Okay. Page 286?

21 Q. Yes, on Line 3.

22 A. Last page, huh? Okay.

23 Q. So, on page 286, the second-to-last page, actually, I
24 asked you: "How many further interactions did you have with
25 Delgado?"

1 And do you see that, without my reading this to you,
2 that you explained, in the second sentence, that Delgado came
3 to Columbus to talk about joining in our lawsuit and you saw
4 him there -- here?

5 A. I'm just trying to look at this in context here. Just
6 give me one second.

7 Q. By all means.

8 A. So it says: "How many further interactions did you have
9 with Delgado?"

10 And I'm going to look -- I was looking back, just to see
11 what you were referring to, which interactions. So I'll assume
12 it was that dinner in April of '04. And so fast forward to
13 2009, or I think -- No. I say here that I had met with him.
14 He was somewhat involved in that settlement initiative that
15 Mr. Chavez's sisters came.

16 And then I saw him some -- Delgado, I think, tried to
17 get involved with some guys that owned another note and tried
18 to come to Columbus to talk about joining our lawsuit. And I
19 saw him then. And I saw him one other time in Cincinnati with
20 his attorney, Pierce, there.

21 Q. Well, does that refresh your recollection that you met
22 with Delgado here in Columbus to discuss the possibility of his
23 joining in this lawsuit?

24 A. I think he came here. He asked me to meet with him, and
25 I did. So -- I don't remember where we met; but, obviously,

1 I'm saying we did here. So --

2 Q. And, then, at your deposition, at least, you had a
3 recollection of having met with Mr. Delgado and his attorney,
4 Mr. Cunningham, in Cincinnati, correct?

5 A. Yep.

6 Q. And Venospa wanted to assert a claim on four purported
7 Bandagro notes it claimed to own, correct?

8 A. I don't remember that detail, but I know they wanted to
9 assert a claim and get involved in our case.

10 Q. You only met Pavanelli once, right?

11 A. Yes.

12 Q. And that was in April 2004, in Como, when you traveled
13 there on March 31st?

14 A. That's right.

15 Q. And that was part of your exploration of the notes,
16 right?

17 A. That was primarily part of my trying to get a deal with
18 him. That was the main purpose there. Again, as I said, there
19 was nothing that he could say, really, that would affect the
20 legal opinion that Alcalde was doing, the finality of the
21 Attorney General opinion.

22 Q. I know you like to say that.

23 A. No. It's not I like to say that.

24 THE COURT: We've been over this -- all right? -- from
25 both ends. Let's just move forward. Okay?

1 THE WITNESS: You characterized what I saw him for,
2 and I was just trying to correct it.

3 THE COURT: And I've heard this. I mean, I get this
4 part.

5 Go ahead.

6 BY MR. SCHWARTZ:

7 Q. So, you met Mr. Usuelli that trip, and Mr. Schianchi
8 that trip, for the first time, right?

9 A. Yes.

10 Q. And Pavanelli met you at -- What was the name of the
11 hotel?

12 A. It's a hotel called Villa D'Este.

13 Q. Villa D'Este -- right? -- which you characterized as the
14 best hotel in the world, right?

15 A. I think we had a long colloquy about this; but, yeah, it
16 was a great hotel. It was recommended to me, and it was a
17 really nice place. It's on Lake Como.

18 Q. And Pavanelli was ordering everyone around like he was
19 royalty, right?

20 A. He had a presence about him, for sure.

21 Q. And that must have seemed incongruous -- right? -- that
22 the guy who was begging you for cash and besieging you through
23 Larry Corna was living such a lavish lifestyle, right?

24 A. I didn't say he was living a lavish lifestyle. I said
25 he had a presence when he was sitting with me in Villa D'Este

1 at a breakfast that I was buying.

2 Q. You formed the impression, when you met Pavanelli, that
3 he might be on a downhill slide, though, right?

4 A. Well, I had that impression because he -- you know, and
5 he kind of admitted to it, in a sense, that he was worn out;
6 he'd been trying to cash these notes forever, and he was
7 obviously out of money. He was asking me for, you know, money
8 consistently.

9 So, yeah, he was kind of -- he was in need of money.
10 Right?

11 Q. And you thought you could take advantage of that, right?

12 A. Well, listen, my job is -- I don't know take advantage
13 of it, because there is always two sides to a deal.

14 My thought was that it would operate to my advantage, to
15 my investor group's -- my and my investor group's advantage
16 because, like this and any deal, the greater need the company
17 or the entity has, the better deal you can structure for your
18 group.

19 Q. And Pavanelli gave you a large stack of documents that
20 you stuffed in your suitcase when you came home, right?

21 A. During the trip, he gave me documents that I brought
22 back, yes. We've talked about that.

23 Q. This was after you'd already concluded your investment
24 thesis, right?

25 A. We'd reached our conclusion. Like, it was post initial

1 diligence. And then we were into this final diligence. Make a
2 decision. This was part of that, yes.

3 Q. You took all the documents, though, and gave them to
4 your lawyers, right?

5 A. Right.

6 Q. You wanted them to review them, didn't you?

7 THE COURT: I'm sorry. I missed that question.

8 BY MR. SCHWARTZ:

9 Q. You wanted your lawyers to review those documents,
10 right?

11 A. I gave them the documents. I don't remember -- As we
12 discussed in the deposition, I didn't read the documents. I
13 don't remember what was precisely in there. So, they may have
14 already had some of the documents. I gave my lawyers the
15 documents.

16 Q. So, this diligence process didn't really end after you
17 got the first informal opinion from Alcalde on the so-called
18 final and binding issue, right?

19 A. As I said, we reached our conclusion at the end of
20 February, early March. And then we went about just verifying
21 everything. Right?

22 So we didn't go into the process of spending all the
23 time and money for travel and all of that until we'd reached
24 the conclusion.

25 Q. You didn't need to go to Como if you'd already formed

1 this investment thesis, though, did you?

2 A. Again, I wanted -- I had to -- I wanted to make a deal
3 with the guy. And those things are done, better done, face to
4 face.

5 Q. Mr. Richards, we're here today. Skye is suing for
6 nonpayment of two purported promissory notes, right?

7 A. We're here over collecting on the promissory notes. I
8 don't know exactly -- I'm careful as to when you characterize
9 it. But we're here in a lawsuit over 7/12 and 8/12 yes.

10 Q. It turns out you have a third purported Bandagro note,
11 don't you?

12 A. As I said earlier, we obtained 9/12 after we filed the
13 lawsuit.

14 Q. And, just like 7/12 and 8/12, 9/12 has a supposed face
15 value of \$50 million, right?

16 MR. ELLIOTT: Your Honor --

17 THE COURT: Is there an objection?

18 MR. ELLIOTT: Yes, Your Honor. This is not relevant
19 to this case whatsoever.

20 MR. SCHWARTZ: It's highly relevant.

21 THE COURT: Tell me how it ties in.

22 MR. SCHWARTZ: Here, we have Mr. Richards/Skye
23 Ventures in possession of a third instrument, identical to the
24 other two, for \$50 million, which he has been sitting on for
25 years on end, letting it collect dust. That in and of itself

1 goes to the validity of the instruments and to the purpose of
2 the lawsuit and the structure of the case.

3 Think about this: Here's a plaintiff with 7 of 12 and 8
4 of 12, all these architectural arrangements that are a moving
5 target, with a case for a hundred million dollars, at the same
6 time sitting with another note in the same amount in its back
7 pocket, doing absolutely nothing about it.

8 We asked Mr. Richards at his deposition: Why aren't you
9 doing anything about this if this is a valid instrument?

10 In substance, his answer was: I don't know.

11 Then he submits an errata sheet. And you know we have
12 that errata motion still pending.

13 The errata sheet attempts to concoct an explanation for
14 an answer that obviously was known to be harmful to the case.
15 That explanation is itself --

16 THE COURT: Just to cut to the quick, so you're -- I'm
17 the trier of fact. I have to think the way a jury would. This
18 is a time where I can draw inferences or not.

19 You would argue that the inference would be, you've got
20 three notes; one of them you're not sure of; that somehow the
21 inference could be there is a lot of doubt about the other two?

22 MR. SCHWARTZ: Absolutely.

23 THE COURT: All right. Now, how do you come back to
24 that?

25 MR. ELLIOTT: Your Honor, this is a note that was

1 bought after this lawsuit was filed; and Mr. Richards and Skye
2 Ventures made a decision, for whatever reason, not to include
3 that note within this lawsuit. I just don't see the relevance
4 to that at all, and it's going to lead us down a long path
5 here.

6 THE COURT: Well, your path would be to explain why
7 not. That would complicate the trial somewhat; but, as far as
8 an inference that we just talked about, Mr. Schwartz and I, do
9 you disagree with that?

10 MR. ELLIOTT: I do, Your Honor, because, again, I
11 don't think it has -- it's a subsequent event to the filing of
12 this lawsuit.

13 Certainly, if Mr. Richards had acquired Note 9/12 in --

14 THE COURT: Before that?

15 MR. ELLIOTT: Yeah.

16 THE COURT: When was it acquired?

17 MR. ELLIOTT: After the lawsuit was filed.

18 MR. SCHWARTZ: It's not that simple, because --

19 THE COURT: Nothing seems to be in this case, but go
20 ahead.

21 MR. SCHWARTZ: Well, that's unfortunately so. And I
22 hate to be --

23 THE COURT: What do you contend is the date of
24 purchase?

25 MR. SCHWARTZ: Well, it's like so many of these other

1 agreements. First Mr. Richards, you'll hear, if you allow the
2 questioning, first he's trying to sell it for Gruppo Triad.
3 It's relevant to that to show the partnership.

4 THE COURT: In the preceding circulars and so on?

5 MR. SCHWARTZ: Yes. He said that already, and he
6 mentioned it. Then it morphs into something he owns subject to
7 Gruppo Triad restrictions. Then the Gruppo Triad restrictions
8 are lifted.

9 So, nothing sits still in this case. But think about
10 that: An identical \$50 million instrument.

11 THE COURT: I get it.

12 Mr. Elliott?

13 MR. ELLIOTT: Your Honor, just so the record is clear,
14 the effort on note 9/12 was to place the note that Gruppo Triad
15 had owned. It was -- It was an effort by Skye to place that
16 note in the United States.

17 THE COURT: Place it as in getting investors?

18 MR. ELLIOTT: Exactly, Your Honor.

19 THE COURT: So this would have been more -- Your
20 contention is it would be linked to the circulars seeking
21 people to invest?

22 MR. ELLIOTT: Yes, Your Honor.

23 MR. SCHWARTZ: That's relevant in itself.

24 THE COURT: Well, I'm not being at all sloppy here,
25 but this is not to a jury.

1 I'll hear it. I'm not sure whether I'd put any weight
2 on it, but I'll hear it. And I'll also hear, if appropriate,
3 from the Plaintiff's side about anything I should know as to
4 why a suit wasn't filed on the third note.

5 MR. SCHWARTZ: I'll try to be as efficient as
6 possible.

7 THE COURT: All right.

8 BY MR. SCHWARTZ:

9 Q. You got note 9/12 from Pavanelli just like 7/12 and
10 8/12, right?

11 A. Later.

12 Q. But it came from Pavanelli, right?

13 A. Yes.

14 Q. And it was part of the 2003 --

15 A. It came from Gruppo Triad. Right? So --

16 Q. Clarification accepted.

17 It was part of the 2000 Ministry of Finance
18 investigation into the over \$1 billion of Gruppo Triad notes,
19 right?

20 A. That's right.

21 Q. It was inspected by Carlos Delgado Morean in
22 Switzerland. Do you know that?

23 A. I think that's right.

24 Q. And Skye obtained possession --

25 A. I think Miami was 1 through 8, if I'm not mistaken.

1 Q. So, Skye obtained possession of 9/12 on December 1,
2 2004, right?

3 A. On when?

4 Q. December 1, 2004.

5 A. Yeah, about three or four months after we filed the
6 suit.

7 Q. Exactly. You anticipated my next question.

8 So, let's now turn to D-658.

9 COURTROOM DEPUTY CLERK: D-658.

10 BY MR. SCHWARTZ:

11 Q. Mr. Richards, I'm showing you D-658. It's an agreement,
12 from June 18, 2005, between Skye Ventures, Gruppo Triad, and
13 something called Skye Ventures II. Do you see that?

14 A. Yes.

15 Q. Just so we have the facts straight here, let's look at
16 Section 1.1.

17 Do you see that says: "Skye acquired the status of
18 bearer and owner of note 9/12 in 2004 subject to certain
19 contractual restrictions in favor of Gruppo Triad"?

20 A. I was trying to read the whereases beforehand.

21 Q. Of course, do so if you think that's necessary.

22 A. I don't really remember this. I didn't review this in
23 connection with preparation. So this is the first time I've
24 seen this in -- probably since the deposition.

25 Q. So, before you start looking at it, let's just do some

1 housekeeping here. If you look at the last page of Exhibit
2 D-658, you can see this is executed by you several times and by
3 Pavanelli and by Schianchi, right?

4 A. Say that again. I'm sorry. I apologize.

5 Q. If you look at the last page of D-658, it's executed by
6 you twice, once for Skye Ventures, one for Skye Ventures II?

7 A. Yes.

8 Q. And also by Pavanelli and Schianchi for Gruppo Triad,
9 right?

10 A. That's right.

11 Q. Now take as much time as you need to familiarize
12 yourself with this.

13 A. Okay.

14 Q. You needn't do it out loud. Just review whatever you'd
15 like, and let me know when you're ready.

16 A. Okay. I'm seeing -- read Article I.

17 Q. All right. Let's look at 1.1. So it says: "Skye
18 acquired the status of bearer and owner of note 9/12 in 2004
19 subject to certain contractual restrictions in favor of Gruppo
20 Triad," right?

21 A. December of 2004, yes.

22 Q. All right. It doesn't say that, but I'll agree with you
23 that's what you've put in the interrogatory answers.

24 A. Yes.

25 Q. And then 1.2 very simply says the contractual

1 restrictions are being lifted under this agreement, right?

2 A. Yes.

3 Q. So, as of this June 18, 2005, agreement, Skye was the
4 bearer and owner of note 9/12, with no contractual restrictions
5 whatsoever, right?

6 MR. ELLIOTT: Your Honor, may I just make a clarifying
7 point here? The agreement, itself -- and Mr. Schwartz knows
8 this but has not gone over it -- is with a separate entity
9 called Skye II. And he is using "Skye" in connection with
10 that.

11 So, I didn't want the Court to be confused that we're
12 talking about the entity that bought note 7/12 and 8/12.

13 THE COURT: Let's do some questioning about the entity
14 just so I'm clear on how the Plaintiff connects to this
15 particular party.

16 MR. SCHWARTZ: All right. I think, actually, that --
17 Although Mr. Elliott is correct in one respect, he's incorrect
18 in another. But I'll clear that up.

19 BY MR. SCHWARTZ:

20 Q. Mr. Richards, take a look at the first line of the
21 agreement, the one that says "This agreement is entered into on
22 June 18, 2005." Do you see that?

23 A. Yes.

24 Q. So there is an entity, Skye Ventures II, mentioned
25 there, right?

1 A. Yes.

2 Q. And then Gruppo Triad, right?

3 A. Yes.

4 Q. And Skye Ventures?

5 A. Yes.

6 Q. Right? That's the Plaintiff in this case, right?

7 A. Correct.

8 Q. And then Skye Ventures, the Plaintiff in this case, is
9 described in the parentheses as, quote, Skye, end quote, right?

10 A. Yes.

11 Q. Okay. So, now, looking down at the 1.1, it says Skye,
12 the defined term Skye, acquired the status of bearer and owner
13 of 9/12 in 2004, right?

14 A. Yes, that's what it says.

15 Q. And then 1.2 says any and all contractual restrictions
16 on Skye's ownership are removed and satisfied by execution of
17 this agreement, right?

18 A. Yes.

19 Q. So, as of June 18, 2005, Skye Ventures, the Plaintiff in
20 this case, was the bearer and owner of note 9/12, without any
21 contractual restrictions, right?

22 A. In June of '05, yes. That's when that occurred.

23 Q. Now, going back in time a bit, you had tried to sell
24 note 9/12 for awhile, right?

25 A. Well, we obtained -- The idea was that we got 9/12 with

1 the goal of placing it in a U.S. institution. We talked about
2 doing that earlier, and we were unsuccessful.

3 Q. And then, in fact, one of the companies you tried to
4 sell it to was Libra, right?

5 A. I think, Libra, that was going to -- One of the
6 objections Libra had was that I had too much control of the
7 deal. And so I think maybe Gary was -- Gary Post, who was the
8 good friend of Jess Ravage, was saying, well, maybe he would
9 take this note if he had the sole possession of the note.

10 Q. So, he wasn't interested, right?

11 A. Well, he was interested, but they just said no. They
12 put a lot of time and effort into it. But, at the end, they
13 said no.

14 Q. You also tried to market investments in note 9/12,
15 right?

16 A. Well, like I said, I was trying to find an investor. I
17 would have thought it would be a single investor in the note,
18 somebody would either -- we were looking to fund. So somebody
19 would either buy or not buy. I wasn't doing as in my own group
20 where we have a bunch of guys who put a share in.

21 Q. Well, just like you couldn't find a buyer, you couldn't
22 find an investor, right?

23 A. Well, same thing. Right.

24 Q. And, then, we talked about this at your Rule 30(b)(6)
25 deposition in December 2014, right? Do you remember that? You

1 brought it up yourself.

2 A. I do remember talking about it.

3 Q. And I asked you why hadn't you done anything with this
4 note to try to enforce it, right?

5 A. I don't recall that, but you probably did. I recall we
6 talked a lot about it.

7 Q. And, in substance, you said you didn't know, right?

8 MR. ELLIOTT: Can you refer --

9 THE COURT: Let's get a page and line number.

10 MR. SCHWARTZ: Sure. It's 134 -- It's the Skye Rule
11 30(b)(6). One thirty four, Line 9, is where it starts.

12 THE WITNESS: It's the 30(b)(6)?

13 MR. SCHWARTZ: It is.

14 THE WITNESS: Tell me the page again, please.

15 MR. SCHWARTZ: Page 134, Line 9.

16 BY MR. SCHWARTZ:

17 Q. Why don't you read from 134, Line 9, to 135, Line 4?

18 A. "So why wouldn't you have brought this?"

19 And I said: "Well, I think it would have been a
20 different answer at different times."

21 Q. You can read this to yourself. I'm going to ask you
22 some specific questions after you do.

23 A. Oh, I'm sorry. Okay. So I'm reading this colloquy
24 here, starting on page 134?

25 Q. I've noticed you like to read the surrounding testimony.

1 So, the episode runs from 134, Line 9 -- looks like we just
2 came out of a break -- and it goes to the answer on 135, Line
3 4.

4 A. Yes, I see that.

5 Q. And if you'd look at Lines 14 and 15 on 134, you'll see
6 that you said at the end of that answer: "And I don't know why
7 we didn't pursue it, we just never did." Right?

8 A. Oh! I saw that, "No. Just that we didn't."

9 Q. You're ahead of me. I'm back at Line 14 and 15 on the
10 preceding page.

11 A. "I don't know why we didn't pursue it, we just never
12 did."

13 Q. And then I followed up, at the end of this excerpt on
14 page 135, Line 2, and I asked you: "And you have no
15 explanation for why you didn't?"

16 And your answer was: "No. Just that we didn't."
17 Right?

18 A. That's what I said that day.

19 Q. Now, more than 50 days after your deposition, you
20 submitted an errata sheet, right?

21 A. I remember -- I remember asking you for some extra time
22 to read the deposition because I was very busy at the time, and
23 you gave it to me. You gave me 60 days. And I remember toward
24 the end of that reading the deposition and changing some things
25 that I thought were better said or inaccurate.

1 Q. And one of the answers you've tried to change
2 substantively was this particular answer that we just, or,
3 these particular answers that we just reviewed, right?

4 A. I was anxious to change it as you were asking me here,
5 but can you show me the errata sheet so I can see what I said
6 back then?

7 Q. Sure, absolutely.

8 All right. This is our Impeachment Exhibit #14. Bear
9 with us one second, please.

10 (Whereupon, there was a brief interruption.)

11 COURTROOM DEPUTY CLERK: Impeachment 14.

12 THE WITNESS: Yes. Where are we in the errata sheet?

13 Okay. It should be the back, then, of the errata sheet?

14 BY MR. SCHWARTZ:

15 Q. Well, no. It's the second page. And there is a lot of
16 changes here. I understand. But, on the second page, you
17 started with the -- Looks like you've made the changes on the
18 30(b)(6) first. In any event, the second page of the errata
19 sheet, last change, carrying over, it appears, onto the third
20 page, it's a long change.

21 A. Okay. Yeah, I remember that.

22 Q. So, instead of just saying, "No. Just that we didn't,"
23 you added a lengthy explanation, right?

24 A. Yeah. I tried to -- I thought about it after the
25 deposition when I was reading it. I tried to think back and

1 explain what was going on at the time.

2 And, as I said here, you know, the reliance might have
3 been perceived to be in a different position if for the first
4 time we heard that Venezuela was saying that, you know, there
5 was a new Attorney General position. So, if our case was
6 reliance on seven and eight, it would have created sort of new
7 issues in the case. And Alcalde didn't want that. So, that's
8 why I changed the answer: Because I remembered that.

9 Q. So your new answer was that you had learned about the
10 December 2003 Attorney General by the time Skye finished
11 purchasing 9/12; is that right?

12 A. That's what I wrote there. That's what I thought. I
13 was trying to be more thorough. I could -- I could enlarge on
14 that, but that's what I wrote in the errata sheet.

15 Q. I just want to understand the factual basis of the
16 change. We've seen already that Skye was the owner and the
17 holder of note 9/12 by December 31, 2004, at the latest, right?

18 A. Well, I had received it from Pavanelli in December,
19 right, as we discussed.

20 Q. Well --

21 A. I would claim that I was the owner and holder at that
22 time. Pavanelli might have claimed something different,
23 necessitating this later agreement.

24 Q. All right. We have just looked, though, at D-658. Do
25 you have that?

1 A. Yeah.

2 Q. So turn again to 1.1.

3 A. I'm sorry. D what? 658?

4 Q. Yes.

5 A. Yes.

6 Q. And 1.1, we saw just a moment ago, states that Skye
7 acquired the status of bearer and owner of note 9/12 in 2004,
8 right?

9 A. Yes.

10 Q. And your position is that you first learned of the
11 December 2003 Attorney General opinion sometime in 2005, right?

12 A. Yes. That's what I recall.

13 Q. So, if you were the owner and the holder of 9/12
14 sometime in 2004, what difference would it have made when you
15 learned of the Attorney General's second opinion?

16 A. Well, remember, as I told you before, sometimes I put
17 these things in here 'cause Pavanelli's claiming something
18 different. So I'm giving him some money in June of 2005, and I
19 put in there -- say: Look, here it is; agree with this and
20 quit saying something different.

21 So that could have been the reason that is in there.

22 Second, in December of 2004, we were still endeavoring
23 to sell the notes. And that might have been these
24 restrictions, that the reason we had it, we were trying to sell
25 it for him. Those restrictions were removed by this agreement

1 here in June of '05, as I recall.

2 Q. Was there any restriction in your deal with Gruppo Triad
3 that would have prevented you from commencing a lawsuit on
4 9/12?

5 A. I would imagine there was, yes.

6 Q. On what basis?

7 A. Well, remember, he -- the reason he sent us the note was
8 for us to go out to meet with financial institutions in the
9 United States and see if they would buy the note. I'm sure
10 there was some agreements surrounding that. So, consist -- To
11 take the note and sue on it would be inconsistent with that
12 even if we decided it was a good idea.

13 Q. Do you have any written agreement that imposes some
14 contractual restrictions on your ability to bring a lawsuit on
15 9/12?

16 A. Well, there obviously were because they're referred to
17 in here.

18 Q. Where is it?

19 A. I don't know.

20 Q. All right. Regardless of when you learned of the
21 December 2003 opinion and regardless of when that was in
22 relation to your getting unrestricted control of 9/12, your
23 legal position in this case is that the December 2003 opinion
24 should be disregarded, right?

25 A. That's -- we relied -- Our position is that it's final

1 and binding and that we relied on it.

2 Q. And your position must be that note 9/12 is real, right?

3 A. My opinion is that the Attorney General's decision, if
4 this note -- any note that was included in that is real because
5 in a final, binding, and legal way she said these are valid and
6 real.

7 Q. But --

8 A. I don't know if she used the word "real," but valid and
9 actual instruments.

10 Q. But you've done nothing whatsoever to try to enforce
11 this purported \$50 million bearer note, right?

12 MR. ELLIOTT: Your Honor --

13 THE WITNESS: Again, he is --

14 MR. ELLIOTT: -- he's explained why he didn't do that.

15 THE COURT: I think we're pretty exhausted on this
16 topic right now. I get the point.

17 MR. SCHWARTZ: All right.

18 One moment, please.

19 I have a couple of documents concerning number 9/12 that
20 approach it from a slightly different direction. Let's mark
21 display, to Mr. Richards, D-536.

22 COURTROOM DEPUTY CLERK: D-536.

23 BY MR. SCHWARTZ:

24 Q. Mr. Richards, I'm showing you D-536.

25 A. Yes.

1 Q. You'll see it consists of an e-mail on Thursday, April
2 29, 2004, from you, addressed to all. Now, do you see that?

3 A. I do see that.

4 Q. And you start by saying: "First many of you" -- so I
5 assume you're writing to an investor group -- "have not seen a
6 Bandagro Promissory Note," right?

7 A. If this went to an investor group, there would be a, you
8 know, an e-mail on this. There would be a chain, I would
9 think. So I don't know where this went. I have no idea how
10 Larry got it.

11 Q. You actually raise an interesting point.

12 So, as you can tell from the form in which this document
13 is produced, this was produced in this litigation by Mr. Corna
14 as a nonparty. That's reflected by what's at the top of the
15 document.

16 A. I see on the bottom there it says "CORNA."

17 Q. Yes. And Mr. Corna's mode of document production is
18 illustrative of the time when this was done, because, if you
19 look at the top of the page, you'll see it says "lcorna," and
20 it's sent on March 24, 2015, deep into the discovery in this
21 case. Do you see that?

22 A. March 24th, 2015?

23 Q. Last year.

24 A. Okay.

25 Q. That's part of discovery in the case.

1 A. All right.

2 Q. Trust me on that.

3 A. Okay.

4 Q. So, Mr. Corna had a copy of this document. And he
5 produced it as a nonparty. Okay?

6 A. All right.

7 Q. You, as it turns out, didn't produce it.

8 A. Okay.

9 Q. So, when you say if it was an e-mail to investors or if
10 it was intended for investors, or however you phrased it, there
11 would be some kind of distribution, maybe if we had your copy
12 that would be true. Do you understand what I'm saying?

13 A. Well, this isn't my copy. Otherwise, I'm saying, it
14 would be on here. Right? So, I don't know -- It does say to
15 all. So --

16 Q. And it appears, somehow, Mr. Corna got it, right?

17 A. Somehow, he got it.

18 Q. All right. And, however we obtained it in the
19 litigation, you don't have any doubt that you authored this
20 e-mail, right?

21 A. Well, I could read the whole thing to see if I have any
22 doubt.

23 Q. Why don't you do that?

24 A. I can -- yes.

25 Okay. I see that. My signature block is at the bottom.

1 So it look like it's certainly from me.

2 Q. All right. So, the first thing you said is: "First
3 many of you have not seen a Bandagro Promissory Note and I am
4 attaching one for you."

5 And there it is, #9/12, attached, in color. Right?

6 A. Yep.

7 Q. That's the one that's sitting somewhere here in
8 Columbus, right?

9 A. I don't know.

10 Q. You don't even know where it is?

11 A. I don't know if this is the one.

12 Q. Oh!

13 A. This one says "9/12."

14 Q. Where is it now, 9/12?

15 A. It's with the escrow agent.

16 Q. And I want you to look at the second paragraph of this
17 April 29th, 2004, e-mail.

18 A. Yes.

19 Q. You wrote: We are interested to determine, as fully as
20 possible, if our payment on the Bandagro Notes is only a matter
21 of timing -- that is, when the notes will be paid -- not a
22 matter of if the notes will be paid.

23 Do you see that?

24 A. Yes.

25 Q. And this was on April 29, 2004, right?

1 A. Yes.

2 Q. And then you went on to say that you have three law
3 firms, from Switzerland, Venezuela, and the United States,
4 preparing written opinions on two specific issues. The first
5 was, is the opinion of the Attorney General of Venezuela a
6 final non appealable order, right?

7 A. Yes.

8 Q. So, as of April 29th, 2004, it turns out you had not
9 completed your investment thesis, had you?

10 A. Again, I would repeat exactly what I said before, which
11 I think is consistent with this. At the end of March and the
12 beginning of April, Alcalde had given me the opinion that was
13 firm that the Attorney General's decision was final and
14 binding. To complete final diligence, where we would go to our
15 investor group at some level, we were getting written opinions
16 from other lawyers to back that up. So, we were -- At this
17 time, we were in final diligence.

18 Q. Well, first of all --

19 A. So, if that's -- I'm sorry. Go ahead.

20 Q. -- a small detail here. When you say "other lawyers,"
21 you didn't get any other lawyers from the United States to
22 prepare a written opinion, except for Crabbe, Brown and James,
23 right?

24 A. We have three law firms -- from Switzerland, Venezuela
25 and the United States -- preparing written opinions, is what I

1 said.

2 Q. One of those three was in the United States, right?

3 A. Yes. One from Switzerland, one was Venezuela, and one
4 from the United States.

5 Q. One plus one is three?

6 A. One plus one plus one.

7 Q. One plus one plus one is three. That's what I meant to
8 say.

9 Anyway, much more seriously, when you wrote that
10 sentence: We are interested to determine, as fully as
11 possible, if our payment is only a matter of timing -- that is,
12 when -- or matter of if the notes will be paid, you were
13 telling your investor group, including Mr. Corna, that that was
14 still an open question, right?

15 A. No. I was saying, we're trying -- this is -- Again, we
16 had reached the determination at the end of February or March.
17 And so we -- we were saying we were -- the process of trying to
18 determine the final diligence of whether the Attorney General's
19 is final and binding, you will tell your investors we're trying
20 to determine if this -- if it really is a final and binding
21 order, then it's a matter of when you're going to get paid, not
22 if. If it isn't a final and binding order, then you would move
23 on.

24 Q. Well, I'm having some difficulty following that. Look
25 at Question #1 after you said you had the three law firms

1 preparing opinions. I'll read the entirety of it to you.

2 "Is the opinion of the Attorney General of Venezuela a
3 final non appealable order on the issue of whether Gruppo
4 Triad's promissory notes are obligations of the Venezuelan
5 government which must be paid?"

6 Did I read that correctly?

7 A. Exactly. That's what the three law firms -- We had the
8 three law firms, in final diligence, working on written
9 opinions on that issue.

10 Q. Can you see anywhere, either on the lines or between the
11 lines of this e-mail, where you were telling anybody that you'd
12 already reached the conclusion that the Attorney General's
13 opinion was final and binding?

14 A. Well, in this particular document, if it did go to the
15 investor group, it would be more -- you know, you would be
16 saying, I will send this to you at the end of final diligence.

17 So, I don't -- I don't really understand the question.

18 And then it was -- we had not yet reached an agreement
19 on a contingency fee in the case, which was also key.

20 Q. Let's look at D-629.

21 COURTROOM DEPUTY CLERK: D-629.

22 THE WITNESS: Yes.

23 BY MR. SCHWARTZ:

24 Q. Mr. Richards, I'm showing you D-629.

25 A. Yep.

1 Q. It's a summary memorandum. And I want you to look,
2 first, at the second page of it.

3 A. Yes.

4 Q. And it -- This has been produced by your lawyers, Skye
5 Ventures.

6 A. Yes.

7 Q. And you'll notice, on the second page, the authors are
8 identified, or the preparers of the summary. One is Mr. Post,
9 right, --

10 A. Yes.

11 Q. -- from Beverly Hills?

12 A. Yes.

13 Q. And then we have Skye Ventures, right?

14 A. Yes.

15 Q. And look how you describe yourself here: David J.
16 Richards, Skye Ventures, Columbus, Ohio, Consulting Director of
17 Corporate Finance for Gruppo Triad FFC, S.P.A. Do you see
18 that?

19 A. Yes.

20 Q. When were you appointed as Consulting Director of
21 Corporate Finance for Gruppo Triad FFC, S.P.A.?

22 A. I don't know. I don't recall. This is the first time I
23 can recall seeing this particular term.

24 Q. Were you ever appointed Consulting Director of Corporate
25 Finance for Gruppo Triad FFC, S.P.A.?

1 A. I may have been for this limited purpose of trying to
2 sell 9/12.

3 MR. ELLIOTT: Can we lay some foundation with this
4 document, Your Honor?

5 THE COURT: Let's back up on this document, if we
6 could. There's a date on it and so forth. Just cover the
7 essentials.

8 MR. SCHWARTZ: Certainly.

9 BY MR. SCHWARTZ:

10 Q. You recognize, preliminarily, it's a document that was
11 produced by your lawyers in this case on behalf of Skye
12 Ventures, right?

13 A. That's right.

14 Q. And, if you look at the bottom of the first page, it
15 says: "The date of this Summary Investment Memorandum is
16 November 4, 2004," correct?

17 A. Yeah, November of '04. We discussed this before. This
18 was the thing that I mentioned that was attached to the letter.

19 Q. Yes. In fact, you told us there was some communication
20 you sent to investors, or prospective investors, that had a
21 picture of Andy Douglas, right?

22 A. Yes.

23 Q. There he is, on page 3.

24 A. There he is, that's right.

25 Q. So, this is the document you described before, right?

1 A. It was a glossy one. So I'm assuming this is a copy of
2 the -- sort of the glossy brochure.

3 Q. And, if you look at page 4, "PRINCIPAL TERMS OF THE
4 OFFERING," on the left-hand column, there is something called
5 "Note IDs," right?

6 MR. ELLIOTT: Your Honor, again, here we are, well
7 after 7/12 and 8/12 were purchased. This relates to 9/12, the
8 effort to place it into the market.

9 THE COURT: Go ahead, Mr. Lucas. Do you want to
10 consult?

11 MR. LUCAS: Thank you, Your Honor.

12 MR. SCHWARTZ: Your Honor, this document, first of
13 all, is not well after Skye obtained the notes.

14 THE COURT: Well, we've already talked about the third
15 note and the absence of a lawsuit on that note. I think we've
16 covered that.

17 This may have some information regarding the state of
18 the witness' knowledge at this point and, presumably, a few
19 months earlier. That part is relevant. The deal itself, not
20 so much, I would think.

21 MR. SCHWARTZ: Agreed, but the designation of Mr.
22 Richards as Consulting Director --

23 THE COURT: Right. That part, I don't --

24 MR. ELLIOTT: Although, as it relates to note 9/12, I
25 mean --

1 THE COURT: Right. And I get that. But, I mean,
2 still, this is a matter where inferences may be at play and so
3 on. So, I'll hear it. I'm not sure what I'm going to do with
4 it at this point, but I'll hear it.

5 MR. SCHWARTZ: Right. And I'm not going to spend a
6 lot of time on this.

7 BY MR. SCHWARTZ:

8 Q. So, take a look at the -- By the way, you have no doubt
9 this is a non-glossy version of the glossy offering memorandum
10 that you prepared, right?

11 A. Yeah. It's a long time ago, but you told me it is. So,
12 I'll take you at your word.

13 Q. All right. So take a look, now, at the second page. At
14 the end of the -- There is a paragraph -- There is a little
15 picture of some scale on some note there and then another
16 paragraph that's not disrupted by any photograph. Do you see
17 that one? It starts "October 3, 2003."

18 A. Yes, I see that.

19 Q. And in the last sentence, here, you were telling these
20 offerees, whoever they may be, quote: "Under Venezuelan law
21 this is a final decision from which there is no recourse, but
22 the Minister of Finance has not processed payment of the Notes
23 as required by the decision." Right? That's what you wrote?

24 A. Obviously. We were in a lawsuit.

25 Q. And then -- I don't want to dwell on this extensively;

1 but, right next to the picture of Andy Douglas, there is a
2 sentence that starts "To put continued pressure on Venezuela."
3 Do you see that?

4 A. Yes.

5 Q. And you explained that you had retained Sitrick; is that
6 right?

7 A. That's right.

8 Q. And I was about to say -- and I'm not sure if we've gone
9 over this; but, if you look at the fourth page, the note that's
10 identified as the subject of the offering is number 9/12,
11 right?

12 A. That's right.

13 Q. And, then, if you look at page 5, under "KEY INVESTMENT
14 CONSIDERATIONS," --

15 A. Yes.

16 Q. -- point 2, you wrote: "Gruppo and Skye Have a Strong
17 Legal Case and a Lawsuit has been filed in the United States."
18 Right?

19 A. Two things, yes. And both are true. You know, we felt
20 Gruppo and Skye have a strong legal case, and also a lawsuit
21 has been filed in the United States.

22 Q. And then --

23 A. It goes on to say "Skye has filed a lawsuit." So,
24 they're two separate things.

25 MR. ELLIOTT: I'd point out again, Your Honor, again,

1 we're dealing with note 9/12, which at this point is not even
2 owned by Skye.

3 THE COURT: Understood.

4 MR. SCHWARTZ: Well, but the "strong legal case" is
5 about 7/12 and 8/12 here, the allegedly strong legal case.

6 THE COURT: That's describing this case. So don't
7 think I'm not somewhat aware of this case.

8 THE WITNESS: No. I would say that, independently,
9 they have a strong legal case based on the AG decision. I was
10 not referring to 7/12 and 8/12 here. I say a lawsuit has been
11 filed in the United States and Skye has filed a lawsuit.

12 So, let me read the rest of this paragraph.

13 MR. SCHWARTZ: Please.

14 THE WITNESS: Okay. I see it.

15 BY MR. SCHWARTZ:

16 Q. All right. And, then, if you'll look at page 6, point
17 7, there you wrote: There Are Good Legal Precedents Supporting
18 (sic) Gruppo's Success in Litigation, right?

19 A. Yes.

20 Q. And you go on to elaborate.

21 A. Wait. Wait. Wait. Hold on. Sorry. I just -- I did
22 what my lawyers tell me not to do. And that is, just don't
23 agree with you without reading it. So can you point to me
24 where you are?

25 Q. Sure. Page 6, point 7, the last one on the page.

1 A. Yes.

2 Q. It says: There Are Good Legal Precedents Supporting
3 (sic) Gruppo's Success in Litigation. Right?

4 A. Yeah. And, again, I think I would be referring to
5 potential litigation for 9/12 here.

6 Q. And it says: "Gruppo and its advisors have researched
7 similar actions," et cetera, right?

8 A. Yep.

9 Q. Take a look at the last page of this document.

10 A. Okay.

11 Q. It looks like some website address. There is a website
12 established, bandagronotes.com?

13 A. Yes.

14 Q. And a listing of examples of documents that are
15 available, right?

16 A. Yep.

17 Q. And, then, the second-to-last bullet is "Opinion of US
18 Counsel regarding favorable outcome of U.S. litigation." Do
19 you see that?

20 A. Yes.

21 Q. To whom did you make available that opinion of U.S.
22 Counsel?

23 A. I don't know.

24 Q. Who would know?

25 A. I said the documents were available. I don't know if I

1 made it available to anyone.

2 We didn't get much traction with this, incidentally.
3 So, it's not -- you know. I don't recall dealing with anybody.
4 It was a flop. We didn't have anyone interested in this --

5 Q. All right.

6 A. -- at this convention.

7 MR. SCHWARTZ: Your Honor, I know it's only 4:35. I
8 don't know the Court's --

9 THE COURT: Well, I'd like to keep going. I mean,
10 guys, do we want to finish this within the time frame of four
11 to six weeks you'd mentioned? I assume you're not finished
12 with the witness?

13 MR. SCHWARTZ: I'm not. I don't have all that much
14 more.

15 THE COURT: Why don't we try to finish up today if we
16 could?

17 MR. SCHWARTZ: All right.

18 I was going to say it might be more efficient to do it
19 otherwise, but we can press on. I don't know how much Mr.
20 Elliott is going to have.

21 THE COURT: I am assuming there will be a lot. And
22 you'll also have, of course, recross.

23 MR. SCHWARTZ: Yeah. I don't -- I may not be able to
24 finish by 5:00. So -- I can keep going, though.

25 THE COURT: All right.

1 MR. SCHWARTZ: May I have just a moment, please?

2 THE COURT: You may.

3 BY MR. SCHWARTZ:

4 Q. Mr. Richards, you had the opportunity to observe Mr.
5 Alcalde's testimony, right?

6 A. Yes.

7 Q. Did you observe the entirety of it?

8 A. I think I saw most of it.

9 Q. Before Skye obtained the two purported notes in August
10 2004, did Mr. Alcalde keep you informed about what he was
11 learning during his efforts?

12 A. We had many, many discussions, of course.

13 Q. Was there anything that Mr. Alcalde testified to that
14 you had not learned prior to the acquisition of the purported
15 Bandagro notes?

16 A. I don't know. I don't remember, but --

17 Q. Before you acquired the purported notes, did you learn,
18 through Mr. Alcalde, that there was all kinds of information in
19 the public domain, dating back to the 1980s, that there were
20 fake Bandagro notes in circulation?

21 A. Again, like he said in his testimony, there was mention
22 of this. The AG was aware of it. And he may have mentioned it
23 to me in that context: That there were, you know -- she
24 recognized in her decision that there were counterfeit notes
25 and that decision here had to be made as to whether these notes

1 were issued.

2 Q. Before Skye acquired the two purported Bandagro notes
3 from Gruppo Triad, did you learn, through Mr. Alcalde, that the
4 Venezuelan newspapers were reporting about Pavanelli's
5 connection to a 1987 Customs incident at JFK Airport in New
6 York?

7 A. No, not that I recall.

8 Q. Before Skye acquired the two purported Bandagro notes
9 from Gruppo Triad, did you learn, through Mr. Alcalde, that
10 Pavanelli had admitted that he had been convicted, in London,
11 for a crime involving fake Bandagro notes?

12 A. Say that again. Before I purchased the notes, did I
13 learn that there was this London case?

14 Yes. I think I've testified to that.

15 Q. And that there had been a conviction for a crime
16 involving fake Bandagro notes?

17 A. I think there was -- What I'd learned was, there was a
18 conviction for conspiracy, in some regard, of handling
19 instruments, but that he had been acquitted of actually holding
20 counterfeit notes. I might have been wrong, but that's what
21 I -- that's what was told to me.

22 Q. Did you understand that the conspiracy conviction
23 involved fake Bandagro notes?

24 MR. ELLIOTT: Objection, Your Honor. He's now
25 testified about what he knew of the issue, and there's no

1 foundation for that.

2 THE COURT: Well, I wasn't clear about the answer, to
3 be honest. So I'm going to permit the question to be answered.

4 THE WITNESS: So, it was related to me that there were
5 three or four charges against him, three involving possessing
6 counterfeit instruments and one of which was conspiracy; that
7 he was acquitted of the three charges involving counterfeit
8 instruments, and that he was convicted of a conspiracy charge
9 of some type; and whether that was related to -- It was picked
10 up -- I think he was -- As I remember, he was picked up in --
11 This had something to do with the notes being delivered to him.
12 And so it was a conspiracy in that regard. But my memory of
13 that, that last part, is kind of foggy.

14 BY MR. SCHWARTZ:

15 Q. So, you don't know what the subject of the conspiracy
16 was?

17 A. No, I don't.

18 Q. And you didn't know then, is the more important
19 question?

20 A. I didn't.

21 THE COURT: I don't want to ask any questions here,
22 but I'm still a little confused with the answer and the
23 question. I will ask, if you don't mind.

24 So, the conspiracy, you were aware of?

25 THE WITNESS: Yes.

1 THE COURT: And what we would call the substantive
2 matter involving the notes, your information was he was
3 acquitted?

4 THE WITNESS: That's what he said.

5 THE COURT: And the conspiracy case, what did he know
6 about that?

7 THE WITNESS: It was a conspiracy having to do with
8 how he took the notes in, or something.

9 THE COURT: But, again, Bandagro notes?

10 THE WITNESS: Correct.

11 THE COURT: All right. That's what I needed to clear
12 up. Thank you.

13 MR. SCHWARTZ: All right. We're going to have to look
14 at the deposition, just briefly, on this, because --

15 THE COURT: You did hear that last answer?

16 MR. SCHWARTZ: I think what I heard the last answer to
17 be --

18 THE COURT: I thought that cleared it up, but I'll
19 leave it to you.

20 MR. SCHWARTZ: Well, if I heard correctly -- and I was
21 grabbing the deposition, so I may have missed it, and my
22 apologies for that -- I thought what I heard, consistent with
23 what I heard before, is that there was substantive counts
24 involving false instruments on which Mr. Richards understood
25 there were acquittals and a conspiracy charge on which there

1 was a conviction, but he's not sure of the circumstances of the
2 conspiracy.

3 THE COURT: He did say they involved Bandagro notes,
4 though.

5 MR. SCHWARTZ: He did say that.

6 THE COURT: Yes.

7 MR. SCHWARTZ: All right. Then, that clears that up.

8 BY MR. SCHWARTZ:

9 Q. With regard to that conspiracy charge, did you
10 understand that the charge involved not just Bandagro notes,
11 but fake Bandagro notes?

12 A. I don't remember the details of that today as I'm
13 sitting here.

14 Q. All right. Let's talk about what happened on
15 December -- in December 2014 when we went over this subject.

16 A. Okay.

17 Q. This is personal deposition, page 120.

18 A. One twenty what?

19 Q. Page 120, Line 11. And then we're going to have an
20 errata discussion after that.

21 A. Okay.

22 Q. So, 120, Line 11, question: "At some point did you
23 learn that Pavanelli had been convicted in the United Kingdom
24 in 1989 for conspiracy to use fake Bandagro notes?"

25 Answer: "Yes."

1 Line 15: When did you learn that?

2 Answer: "I don't remember. It was in 2004 and it was
3 either at or after my Como meeting with Pavanelli."

4 So, did I ask those questions, and did you --

5 A. That's what it says there.

6 Q. -- provide those answers?

7 A. That's right.

8 Q. Okay. But you changed the answer. So we need to look
9 at the errata again.

10 A. Okay. I was going to say I don't remember the "fake"
11 part, but I'm not saying --

12 Q. Do you still have the errata in front of you?

13 A. Yeah, I do.

14 Q. Hold on.

15 MR. SCHWARTZ: We'll have to separately mark this,
16 Your Honor, because it's now clear to me that we had two errata
17 sheets. And the first one we marked was just for the 30(b)(6).

18 THE COURT: So this is the errata of the errata sheet?

19 MR. SCHWARTZ: No. You need two errata sheets to
20 accommodate all these changes. But this is -- There was one
21 for the 30(b)(6), which we used previously. Now we have to
22 mark this one separately.

23 COURTROOM DEPUTY CLERK: Impeachment 15.

24 BY MR. SCHWARTZ:

25 Q. All right. So, it's page 120, Line 14. The answer was

1 a flat-out "Yes," correct, Mr. Richards?

2 A. Yes.

3 Q. And then you made a change. And the reason you offered
4 for the change was that you misunderstood the question.

5 A. I think you've -- I think what I felt was, you slipped
6 that sort of "false" in the question by it, and I tried to
7 clarify that, what I thought I knew.

8 Q. You didn't -- but you didn't put "Reason for change:
9 Lawyer slipped word in," right?

10 A. Well, "Misunderstood question." I was trying not to be
11 pejorative in any way, shape, or form.

12 Q. So, you misunderstood the question. And then you
13 provided this embellishment, right?

14 A. Yeah. I provided this answer, which I think I've said
15 today. And I think that's accurate.

16 Q. And what is it that happened in the roughly 50 days
17 between December 22nd of 2014 and the time you submitted the
18 errata that occasioned this change?

19 A. I think I noticed that you had put "fake" in the
20 question, and I didn't recall responding to that particular
21 aspect of the question, and I wanted to clarify.

22 If you got me, you got me. But that's what I was trying
23 to clarify.

24 Q. Did Alcalde tell you during the course of due diligence,
25 such as it was, that the London conviction involved fake

1 Bandagro notes?

2 A. No, not that I recall. Again, no particular reason I
3 would have recalled it, because my conversations with Alcalde
4 were largely around the issue that we were trying to determine.

5 Q. Well, you heard Alcalde testify that he conducted a
6 factual investigation into other matters, right?

7 A. Yes. I mean, he became aware of other matters, for
8 sure. He read -- I think I heard him say he read everything he
9 could read.

10 Q. Did he tell you that Venezuela had issued a public
11 statement after the October 3, 2003, Attorney General opinion
12 stating that the Bandagro Caroni Code ICC-322 Promissory Notes
13 were fraudulent?

14 A. I don't recall.

15 Q. Did Alcalde convey to you, before you obtained the
16 purported notes, that he knew that Tobias Nobrega, the Minister
17 of Finance at the time, was backing away from the Attorney
18 General's October 3, 2003, opinion?

19 A. I don't remember that. Of course, there were things
20 that we've discussed here that -- where that stuff was kind of
21 into the Spanish press. I don't know if he ever brought that
22 up to me or not. We knew, of course, it wasn't -- he wasn't
23 paying.

24 Q. Now, you testified yesterday that Delgado was someone
25 you perceived as an opportunist, just like you, right?

1 A. I don't remember saying "just like me," but he -- we are
2 opportunistic in our fund, for sure. I wouldn't say Delgado
3 was just like me, of course.

4 Q. All right. I'm looking at the transcript from
5 yesterday's testimony. This is in response, I believe, to a
6 question from your own counsel. I'm sure you don't have the
7 transcript, but here is what it says:

8 Question -- This is on page 74 to 75 of your testimony
9 yesterday -- "Who's Roman Delgado? What's your understanding
10 of who that is?"

11 And then it goes on for awhile. And eventually --

12 MR. ELLIOTT: Your Honor, we don't have a copy of this
13 transcript. I'm not sure --

14 THE COURT: In the modern technology day of day-after,
15 I'm not sure this is a traditional way of impeaching; but, at a
16 minimum, we could display it.

17 MR. SCHWARTZ: All right.

18 MR. LUCAS: Can we do that?

19 THE COURT: Yes.

20 MR. SCHWARTZ: We can do it with the ELMO.

21 THE COURT: Just pull the ELMO up. And Mr. Quisumbing
22 can do that.

23 MR. LUCAS: While they're doing that, does anybody
24 know why it's called an ELMO?

25 THE COURT: It used to be the manufacturer. It's sort

1 of like xerox.

2 MR. LUCAS: Oh! Is that what it is?

3 THE COURT: Yeah. I'm way out of date when I used
4 that word.

5 If you'd just pull that straight up, and then just put
6 it right on there, and it should display.

7 You probably need to put it on automatic focus.

8 MR. BALDWIN: Your Honor is probably far, far more
9 familiar with this than I am. So I hope I don't break it.

10 MR. SCHWARTZ: Now it's an eye test. It's page -- Jim
11 may have it here. It's page 74, Line 12, running to 75, Line
12 8.

13 BY MR. SCHWARTZ:

14 Q. All right. So, Mr. Richards, it's a long answer. I was
15 focused on Lines 20 to 22, but you can read the entirety of
16 this.

17 A. I see it. I remember that.

18 Q. All right. So, without getting hung up on the
19 particular words, you've characterized yourself as an
20 opportunist, right?

21 A. What I said is, he -- he is kind of like me in this
22 case. He saw an opportunity.

23 That's what I said there. That's what I just read,
24 which I think he did. He saw an opportunity.

25 We are an opportunistic fund. We look for

1 opportunities.

2 Q. Before Skye obtained the notes, did Alcalde tell you
3 that he was suspicious of Delgado?

4 A. Well, it was more, later, when Alcalde -- Delgado was
5 arranging all these meetings with ambassadors and officials and
6 the lawyers for Venezuela. And he was suspicious because
7 Delgado had all these connections. So that was why he was
8 suspicious.

9 Q. Did he ever tell you that he was leery -- Let me
10 rephrase the question. Before Skye obtained the two purported
11 notes, did Alcalde tell you he was suspicious and leery of
12 Delgado?

13 A. I think he said that yesterday.

14 Q. Who did?

15 A. Alcalde. Or not yesterday. I was here all day
16 yesterday.

17 The day before. I think he said he was leery of
18 Delgado.

19 Q. Exactly.

20 A. He may have said the same thing to me.

21 Q. I'm asking. Did he?

22 A. I don't remember. I remember this discussion where he
23 thought he was somebody from the Venezuelan secret police
24 trying to trap him, and he was suspicious in that sense. And,
25 you know, it was because Delgado could usher right into the law

1 offices of Esther Bigott, who was representing Venezuela at the
2 time, or the Minister of the Vatican, or -- So, that's why he
3 was suspicious.

4 Q. You've gotta keep your time frames together and try not
5 to conflate Alcalde's testimony from what I'm asking you right
6 now.

7 A. Okay.

8 Q. Esther Bigott, I don't need to know about. That's after
9 the litigation.

10 Here is what I want to find out: Before you obtained
11 the notes, did Alcalde tell you that he thought Delgado was
12 trying to entrap him, or you, in some sort of criminal offense?

13 A. I don't remember that, before the notes. If he did it,
14 I don't remember it. And, if he did say it, I don't remember a
15 time frame.

16 Q. And I want to just go back to the prior question with a
17 clear time focus to it.

18 Before you obtained the two purported notes, did Alcalde
19 tell you that he was either suspicious or leery of Delgado?

20 A. I thought I just answered that. I don't remember.

21 Q. I just want to make sure we --

22 A. He may have. I just don't remember.

23 Q. Before Skye obtained the notes, did Alcalde ever tell
24 you that he didn't trust Delgado?

25 A. I don't remember.

1 Q. Did he tell you that he put no weight on what Pavanelli
2 said?

3 A. Well, I think -- He said that yesterday, and -- or --
4 sorry -- the day before; that, in the context of what he was
5 trying to decide, he didn't put much weight on what anybody
6 said, including Pavanelli.

7 Q. Did he communicate the Pavanelli component of that to
8 you before you obtained the two purported notes?

9 A. I think he said that he would -- didn't have to tell me
10 anything like that; that would be up to me.

11 Q. Did Pavanelli ever supply you with any court documents
12 regarding his London criminal case?

13 A. Just the Swiss case.

14 Q. Did Pavanelli ever give you any court documents
15 regarding his Italian criminal case?

16 THE COURT: I'm sorry. I missed that.

17 MR. SCHWARTZ: Italian criminal case.

18 THE COURT: Italian. All right.

19 THE WITNESS: There was an Italian case in '91, or the
20 '90s, of some kind, where he was detained and then released
21 again and given the notes back. And I think he gave us those.

22 BY MR. SCHWARTZ:

23 Q. He gave you those documents?

24 A. At some point, I think.

25 Q. Before you obtained the purported notes?

1 A. I don't know.

2 MR. SCHWARTZ: May I have just a moment, Your Honor?
3 I may be able to get this done in a couple of minutes.

4 THE COURT: All right.

5 (Whereupon, there was a brief interruption.)

6 BY MR. SCHWARTZ:

7 Q. Mr. Richards, you thought Pavanelli was a guy you could
8 trust for the most part, right?

9 A. Did I say that?

10 Q. I'm asking.

11 A. I don't recall saying that, put it that way. And the
12 question, I guess, would be when.

13 Q. You thought he was an honorable guy, right?

14 A. Again I would ask you, when did I think that? You
15 obviously have something there. I'd appreciate seeing it.

16 Q. Let's take a look at your deposition, 30(b)(6).

17 A. Yep.

18 Q. Page 243.

19 A. Yes, I'm there.

20 Q. All right. Page 243, Line 6. You can read the prior
21 colloquy, if that is necessary, to frame the question; but it
22 should be apparent what the context is.

23 "Did you think you could trust him?"

24 Line 7, answer: "Never -- tried not to -- I never made
25 that determination."

1 And then --

2 A. This is in a context -- I'm just reading the part before
3 where you're saying, did you get stuff in writing from him,
4 right? And why was it necessary to get that stuff in writing?
5 Because you couldn't trust him?

6 And that's -- So, in that context, you're asking me, why
7 did you get stuff in writing; can't you trust him.

8 And I would say I never tried to make the determination.
9 You got the stuff -- We got the stuff in writing. I think
10 that's kind of what's going on there.

11 Q. I understand what you're trying to do here, but let's
12 just look at the questions and answers.

13 The question was, on Line 6: "Do you think you could
14 trust him?"

15 Then there was some colloquy.

16 The question was read back on Line 17.

17 And you answered, on Line 18: "I did think I could
18 trust the guy for the most part."

19 Right? Am I reading that correctly?

20 A. Yeah. I -- That's -- You are, but in the context -- I
21 think you have to read the context of why you were saying this.
22 But, yeah. It's at the end of this discussion about whether we
23 put things in writing and that kind of thing. But, certainly,
24 those are my -- that's my answer.

25 Q. And on page 244, Line 5, question: "Did you ever reach

1 a point where you determined that you could not trust him?"

2 Answer, Line 7: "No."

3 A. And I say, "Remember, I stopped dealing with the guy
4 way, way back when," right after we filed the lawsuit, or not
5 too long after we filed the lawsuit.

6 Q. And, then, look at the top of page 244. It's part of an
7 answer that was a continuation of one of the questions we had
8 looked at before. You wrote, or spoke, on Line 1: "I thought
9 he was an honorable guy," right?

10 A. I think, when I left Como, for sure, the impression was
11 that here is a guy who admitted, you know, these two cases. He
12 seemed like he was consistently trying to get the notes. He,
13 you know -- heck -- he filed the request with the issuer of the
14 notes.

15 So, yeah, it seemed like an honorable guy.

16 Q. As of the time you concluded the purchase of notes 7/12
17 and 8/12, did you still think he was an honorable guy then?

18 A. I don't remember my thoughts at that time, but I was
19 definitely trying to separate myself from him then. And you
20 can see, from that letter I wrote to my investors, finally, we
21 don't have to deal with this guy in this case anymore.

22 Q. And then, finally, on page 244, Line 18 through 20, you
23 said: "So I'm trying to think if he ever told me anything that
24 wasn't true and I don't recall anything specific," right?

25 A. Yes. You asked me did -- oh -- in retrospect, do you

1 think it was a mistake to trust him. And I say, "I can't think
2 of anything he told me that wasn't true." So --

3 Q. Let's look at page 277. I might be on the wrong page.
4 Bear with me one second.

5 I'm on the wrong volume. That would explain why I'm not
6 looking directly at what I'm reading.

7 Bear with me one second.

8 So, I'm in the 30(b)(6) at 277. Are you there?

9 A. Yes.

10 Q. It's taken me awhile to get there.

11 A. All right.

12 Q. Line 23.

13 A. Yes.

14 Q. "Everything that Pavanelli told me that we checked out
15 turned out to be accurate." Was that true?

16 A. From that -- I think this was -- Sorry. Tell me
17 which -- what line you are. I was reading, sort of, the
18 context.

19 Q. I'm sorry it's taken me so long to get there. It's Line
20 23, the question on Line 20: "In making the decision that you
21 did for Skye to purchase notes 7/12 and 8/12, did you rely on
22 Pavanelli's story?"

23 And embedded within the answer that follows you said:
24 "Everything that Pavanelli told me that we checked out turned
25 out to be accurate."

1 Is that true?

2 A. So, again, since I read the page before, I am saying to
3 you: Look, what I've said in this trial a million times, and
4 people are sick of hearing me say it, I was concerned that the
5 Attorney General's decision was final and binding. That was
6 the main thing. And I said this again and again and again.
7 And then you asked me, here, did it affect me in any way. And
8 I said, yeah, probably, in some way, it did. So --

9 Q. And, finally, on page 278, Line 16, question: "Is there
10 anything Pavanelli told you prior to the time you purchased the
11 purported notes 7 of 12 and 8 of 12 in early August 2004 that
12 you did not believe?"

13 And, after some preliminary commentary, you concluded:
14 "I don't think there was anything that I viewed as really
15 important that I didn't believe."

16 Is that true?

17 A. Well, look, this is the end of two very long days. It's
18 the very end. And I say, I can't think of anything. So that's
19 what I said.

20 Q. That was the end of two long days at the deposition, or
21 you're saying two long days here?

22 A. I'm trying to think back as to whether I was more tired
23 then or more tired now, but they're both long days.

24 MR. SCHWARTZ: I have no further questions.

25 THE COURT: We're actually after five o'clock. So we

1 will resume, in the morning, with the redirect examination of
2 Mr. Richards.

3 We'll be in recess.

4 MR. C. COOPER: Your Honor, --

5 THE COURT: Mr. Richards, you may step down.

6 Please be seated, Counsel.

7 Mr. Cooper?

8 MR. C. COOPER: I just wanted to alert the Court to
9 this scheduling issue.

10 Back -- I think it would be maybe in the settlement
11 conference, and then again at the pretrial conference, when we
12 mapped out the case, I think we indicated we have two witnesses
13 for this week. Defense Counsel indicated that, with cross, it
14 would take the entire week.

15 As a result of that, the parties scheduled the
16 translator to arrive this weekend. And the Venezuelan
17 witnesses that we have, our last two witnesses, are flying in
18 this weekend as well.

19 We don't want any downtime, obviously. But the next two
20 witnesses will require that translator.

21 THE COURT: All right.

22 How long do you expect your redirect to take of Mr.
23 Richards?

24 MR. ELLIOTT: Hard to tell, Your Honor, but probably
25 an hour.

1 THE COURT: All right. And I'm going to guess recross
2 will take at least that long. That gives us half a day.

3 Is there anyone else you can fill in?

4 MR. C. COOPER: We don't have any other witnesses,
5 Judge. We have two final witnesses.

6 We could -- I don't know if the Court wants to hear, for
7 lack of a better word, presentation of deposition designations
8 to draw the Court's attention to things that we find
9 significant --

10 THE COURT: Well, we can -- I know, when you're
11 bringing in people from Venezuela, this can be hard. But we're
12 trying to avoid this, so we can stay on schedule.

13 We'll use -- Plan on we'll do something tomorrow
14 afternoon. It won't be a dead time.

15 All right. With that, we'll be in recess.

16 (Proceedings were concluded at 5:05 p.m.)

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WITNESS INDEX

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WITNESSES

DIRECT CROSS REDIRECT RECROSS

PLAINTIFF's:

David Richards

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C E R T I F I C A T E

We, Laura Samuels, Denise Errett, Lahana DuFour,
Shawna Evans and Darla Coulter, do hereby certify that the
foregoing is a true and correct transcript of the proceedings
before the Honorable Edmund A. Sargus, Jr., Judge, in the
United States District Court, Southern District of Ohio,
Eastern Division, on the date indicated, reported by us in
shorthand and transcribed by us or under our supervision.

s/Laura L. Samuels, RPR
Laura L. Samuels, RPR
Official Federal Court Reporter
March 16, 2016

s/Denise N. Errett, FCRR
Denise N. Errett, FCRR
Official Federal Court Reporter

s/Lahana DuFour, RMR, CRR
Lahana DuFour, RMR, CRR
Official Federal Court Reporter

s/Shawna J. Evans, RMR
Shawna J. Evans, RMR
Official Federal Court Reporter

s/Darla J. Coulter, RMR, CRR
Darla J. Coulter, RMR, CRR
Former Official Federal Court Reporter